

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

Miami-Dade County Courthouse
Miami, Florida
Wednesday, 1:45 p.m.
November 3, 1999

TRIAL - VOLUME 385

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.

SUSAN ROSENBLATT, ESQ.

On behalf of Plaintiffs

WINSTON & STRAWN

DAN WEBB, ESQ.

BRADLEY LERMAN, ESQ.

On behalf of Defendant Philip Morris

DECHERT PRICE & RHOADS

WILLIAM DODDS, ESQ.

On behalf of Defendant Philip Morris

COLL DAVIDSON SMITH SALTER & BARKETT

NORMAN A. COLL, ESQ.

On behalf of Defendant Philip Morris

ZACK KOSNITZKY

STEPHEN N. ZACK, ESQ.

On behalf of Defendant Philip Morris

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DOUGLAS J. CHUMBLEY, ESQ.

On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE

JAMES JOHNSON, ESQ.

JAMES YOUNG, ESQ.

DIANE G. PULLEY, ESQ.

On behalf of Defendant R.J. Reynolds

KING & SPALDING

GORDON SMITH, ESQ.

On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY

KELLY ANNE LUTHER, ESQ.

On behalf of Defendants Liggett Group

and Brooke Group

APPEARANCES (Continued)

SHOOK HARDY & BACON

KENNETH J. REILLY, ESQ.

WILLIAM P. GERAGHTY, ESQ.

On behalf of Defendant Brown & Williamson

JAMES T. NEWSOM, ESQ.

On behalf of Defendant Lorillard
GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
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JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute
KASOWITZ BENSON TORRES & FRIEDMAN
AARON MARKS, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
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ANTHONY UPSHAW, ESQ.
On behalf of Defendant Brown & Williamson
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JOSEPH P. MOODHE, ESQ.
On behalf of Defendant Council for Tobacco Research

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JULIUS RICHMOND	
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1 (Whereupon, the following proceedings were had:)
2 THE COURT: Have a seat, please. Are you all
3 ready, everybody?
4 MR. ROSENBLATT: Yes, judge.
5 THE COURT: All right. Bring the jury out.
6 THE BAILIFF: Bringing in the jury.
7 Jurors entering the courtroom.
8 (The jurors entered the courtroom.)
9 THE COURT: Have a seat, folks, thank you.
10 All right. Back from lunch, everybody happy,
11 well fed?
12 All right. We are about to get into the
13 second phase of this witness' testimony, which will be
14 the cross examination on behalf of the defendants.
15 Dr. Richmond.
16 Take the stand, please.
17 Counsel, if you would.
18 MR. WEBB: Thank you very much, Your Honor.
19 Good afternoon.
20 THE JURORS: Good afternoon.
21 CROSS-EXAMINATION
22 BY MR. WEBB:
23 Q. Dr. Richmond, I've not had the pleasure of
24 meeting you, and it's a pleasure. My name is Dan Webb.
25 I am one of the lawyers for Philip Morris.

6

1 I'll be asking some questions about the
2 opinions that you told the jury about here today. If I
3 ask you a question that seems confusing or you don't
4 understand, just tell me and I'll rephrase the
5 question.
6 Doctor, as I understand your testimony, do
7 you agree that you have presented the jury here today
8 with some certain medical opinions regarding causation

9 and addiction to nicotine regarding two specific
10 people, Mary Farnan and Frank Amodeo; is that correct?
11 A. That's correct.
12 Q. These are medical opinions that you're
13 giving; is that correct?
14 A. That's correct.
15 Q. You might keep your voice up just a little
16 bit.
17 They're medical opinions; is that correct?
18 A. Yes, they are.
19 Q. And before you reached these definitive
20 medical opinions, did you do any medical examination of
21 Mrs. Farnan?
22 A. No, I did not.
23 Q. Before you reached your definitive medical
24 opinions regarding Mr. Amodeo, did you ever do a
25 medical examination of Mr. Amodeo?

7

1 A. No, I did not.
2 Q. Did you ever -- before you reached the
3 medical opinion, did you do any medical test relating
4 to Mrs. Farnan?
5 A. No, I did not.
6 Q. Did you do any medical tests relating to
7 Mr. Amodeo?
8 A. No, I did not.
9 Q. Well, did you do -- did you take a medical
10 history -- strike that.
11 Before you reached your medical opinion, did
12 you take a medical history from Mrs. Farnan?
13 A. No, I did not.
14 Q. Before you reached your medical opinions
15 regarding Mr. Amodeo, did you take any medical history
16 from him?
17 A. No, I did not.
18 Q. Now, before you reached your opinions, did
19 you talk to any of the medical doctors that actually
20 had treated Mrs. Farnan before you reached your
21 opinion?
22 A. No, I did not.
23 Q. Did you talk to any of the medical doctors
24 who had treated Mr. Amodeo before you reached your
25 medical opinions?

8

1 A. No, I did not.
2 Q. Did you consult with any other medical
3 doctors just to test out or to see what their view
4 would be before you reached your opinions?
5 A. No, not specifically.
6 Q. Now, during the time period that Mary
7 Farnan -- let me strike that question.
8 Before you reached your medical opinion, did
9 you talk to any of Mary Farnan's family members or
10 friends who knew her to ask them any questions about
11 her medical conditions before you reached your opinion?
12 A. No, I did not.
13 Q. And did you talk to any of Mr. Amodeo's
14 friends or family members about his medical condition
15 before you reached your medical opinions?
16 A. No, I did not.
17 Q. Did you, during the time period that Mary
18 Farnan was smoking cigarettes, did you personally know
19 her or have any contact with her during that time

20 period?
21 A. No, I did not.
22 Q. And with Mr. Amodeo, during the time period
23 that he smoked cigarettes, am I correct you did not
24 know Mr. Amodeo or have any personal knowledge about
25 his smoking habits or his medical condition?

9

1 A. No, other than reviewing the deposition.
2 Q. Right. But I'm --
3 A. What he recorded there.
4 Q. I'll get to that in a minute, but I'm talking
5 about any personal knowledge because you knew
6 Mr. Amodeo or had any contact with him?
7 A. No.
8 Q. Now, in reaching your medical opinions, you
9 obviously had to have some source of information, and I
10 believe Mr. Rosenblatt told us this morning that you
11 received certain medical records of Mrs. Farnan; is
12 that correct?
13 A. That's correct.
14 Q. And I believe those, you have marked, those
15 have been handed to you.
16 I will hand you now what Mr. Rosenblatt
17 handed you this morning, which are the medical records
18 that Mr. Rosenblatt referred to this morning.
19 THE COURT: May I see that for a second?
20 I think there's a number here, looks like
21 Richmond 2. Is that the number?
22 MR. WEBB: Your Honor, that's a deposition
23 number.
24 THE COURT: Well, you didn't give it a number
25 yet.

10

1 THE CLERK: No, I never saw it before until
2 now.
3 THE COURT: Mark it for identification and
4 give it a number so we know what we're talking about.
5 THE CLERK: That's plaintiffs' Exhibit 1A
6 marked for I.D.
7 THE COURT: 1A for I.D.?
8 THE CLERK: Yes, sir.
9 THE COURT: All right.
10 (Plaintiff's Exhibit 1A was marked for
11 identification.)
12 THE COURT: Just make a sticky. Okay.
13 BY MR. WEBB:
14 Q. Dr. Richmond, if I understand correctly, it
15 is the medical records that you have in your hand right
16 now, that have been marked as Plaintiffs' Exhibit 1A
17 for identification, that are the medical records that
18 you looked at to reach your medical opinions regarding
19 Mrs. Farnan; is that correct?
20 A. That's correct.
21 Q. Now, where did you -- where did you get those
22 medical records from? Who gave them to you?
23 A. Mr. Rosenblatt, through the mail.
24 Q. So you received them through the mail, but
25 the source of the information was Mr. Rosenblatt; is

11

1 that correct?
2 A. That's correct.
3 Q. He sent them to you; is that correct?
4 A. That's correct.

5 Q. Mr. Rosenblatt or his office, they're the
6 ones that selected the medical records for you to look
7 at; is that correct?
8 A. Well, I don't know how they arrived at what
9 they sent.
10 Q. You did not --
11 A. You asked me whether they selected. I don't
12 know whether they selected.
13 Q. Let me ask -- I apologize. You did not make
14 the selection?
15 A. That's correct.
16 Q. And as far as -- you got the records from
17 Mr. Rosenblatt and you don't know how they were
18 selected?
19 A. That's correct.
20 Q. Or you don't know who selected them?
21 A. That's correct.
22 Q. Now, in addition to the medical records that
23 you received --
24 A. Well, I don't know whether they're selected
25 or whether they're the complete record.

12

1 Q. You don't know one way or the other?
2 A. That's correct.
3 Q. And other than the medical records that you
4 have in your possession that you received from
5 Mr. Rosenblatt, is there anything else that you relied
6 upon to reach the medical opinions that you've told the
7 jury about here today?
8 A. No.
9 Q. Now, in connection with Mr. Amodeo --
10 MR. WEBB: Your Honor, I think this was shown
11 this morning by Mr. Rosenblatt. Should I have this
12 marked with another plaintiff?
13 THE CLERK: Becomes 1B for I.D.
14 (Plaintiffs' Exhibit 1B was marked for
15 identification.)
16 BY MR. WEBB:
17 Q. Dr. Richmond, I have marked -- I have not
18 marked -- I think this is an exhibit, Mr. Rosenblatt's
19 Exhibit 1B, Plaintiffs' Exhibit 1B it's been marked for
20 identification which, am I correct, those are the
21 Amodeo medical records that you received from
22 Mr. Rosenblatt or his office; is that correct?
23 A. That's correct.
24 Q. And those are the Amodeo related medical
25 records that you reviewed to reach your medical

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1 opinions regarding him; is that correct?
2 A. That's correct.
3 Q. And do you know how -- I take it you played
4 no role in selecting those medical records that are
5 marked as 1B; is that correct?
6 A. That's correct.
7 Q. They were selected by somebody else, and all
8 you know is you received them from Mr. Rosenblatt's
9 office; is that fair to say?
10 A. That's correct.
11 Q. And you don't know how someone went about
12 selecting those records or even if they're a complete
13 set, do you?
14 A. That's correct.
15 Q. Although, actually, with Mr. Amodeo, after

16 you received those records, you actually called up
17 Mr. Rosenblatt's office to ask if there were any more
18 records I believe, did you not?
19 A. I don't recall that I did.
20 Q. So, did you receive any records other than
21 what you have in your hands right there marked as
22 Exhibit 1B?
23 A. No, I did not.
24 Q. Did you rely upon anything else in reaching
25 your opinion regarding Mr. Amodeo, the opinions you've
14
1 rendered regarding Mr. Amodeo, anything else other than
2 what is marked there as Plaintiffs' Exhibit 1B for
3 identification?
4 A. Well, I may have talked to some colleagues
5 about conditions like his.
6 Q. Who did you talk to?
7 A. Well, one person I consulted was an expert in
8 occupational health, particularly dust-borne disease,
9 Dr. Herbert Abrams.
10 Q. Dr. Abrams?
11 A. Herbert K. Abrams.
12 Q. Now, when did you consult with him?
13 A. Earlier this week.
14 Q. Now, you actually had reached your opinions
15 about Mr. Amodeo some time ago though; is that correct?
16 A. That's correct.
17 Q. You gave a deposition and told us your
18 opinion?
19 A. That's correct.
20 Q. So you did not consult with Dr. Abrams to
21 reach your medical opinions?
22 A. No. Not earlier, but I did consult with him
23 earlier in the week and solicited his opinion.
24 Q. I'll get to that in a minute. The opinions
25 that you've told the jury about here today that
15
1 Mr. Amodeo's throat cancer was caused by cigarette
2 smoking, you told us you had reached that opinion when
3 you gave an earlier deposition; is that correct?
4 A. That's correct.
5 Q. So by the time you had reached that medical
6 opinion, you had not consulted with anyone else, had
7 you?
8 A. No, I had not.
9 Q. And I'll get to the wood dust issue later,
10 but I understand you talked to Dr. Abrams. Is there
11 anyone else?
12 A. No.
13 Q. Did you ever call up Mr. Rosenblatt's office
14 and ask them to provide any additional information to
15 you?
16 A. No, I don't believe I did.
17 Q. You accepted what they gave you, and from
18 that you reached your opinions; is that fair to say?
19 A. That's correct.
20 Q. Did you ever ask Mr. Rosenblatt or his office
21 as to what procedure was followed to select those
22 records? Did you ever ask them what procedure was
23 followed?
24 A. No, I did not.
25 Q. Now, I take it you understand that your

1 opinions here in the courtroom are to be independent
2 opinions; is that correct?
3 A. That's correct.
4 Q. You understand them to be independent of the
5 opinions of me or Mr. Rosenblatt or anyone else; is
6 that correct?
7 A. That's correct.
8 Q. Now, you told us that when you practiced --
9 strike the question.
10 I believe you told us that, when you diagnose
11 a person's disease and determine causation, that you do
12 that under two different circumstances. One is where
13 you're a primary physician and the other is where
14 you're a consulting physician; is that correct?
15 A. That's correct.
16 Q. And when you are a primary physician and
17 you're going to diagnose someone's disease and
18 determine what caused their disease, I take it you meet
19 with your patient, you take a medical history, you may
20 do medical tests and you reach some medical opinion; is
21 that fair to say?
22 A. That's correct.
23 Q. When you're a consulting physician, you're
24 consulting with another treating physician or
25 physicians; is that correct?

17

1 A. That's correct.
2 Q. And they have come to you to ask you for your
3 consulting opinion or advice; is that fair to say?
4 A. That's correct.
5 Q. And you then consult with these treating
6 physicians, review medical records; you may or may not
7 see the patient, and you give these treating physicians
8 your opinions or views; is that fair to say?
9 A. That's correct.
10 Q. Now, when is the last time that -- so, well,
11 at least here, obviously we've been through that you
12 did not talk to any treating physicians here regarding
13 Mr. Amodeo.
14 A. No, I did not.
15 Q. Or Mrs. Farnan, right?
16 A. That's correct.
17 Q. Here is my question, Doctor: When is the
18 last time that you as a doctor ever reached a medical
19 opinion regarding someone's disease causation where you
20 never met with the patient, never did any medical
21 tests, never took any medical history and never talked
22 to any treating physicians?
23 A. Never talked to the treating physicians? No.
24 I don't consult without talking to a treating physician
25 at his request, or her request.

18

1 Q. In other words, I'm asking you when is the
2 last time, if ever, you have ever diagnosed or reached
3 a medical opinion about what caused a person's disease
4 without ever meeting with the patient, administering
5 any medical tests, taking any medical history, or at
6 least talking to the treating physicians, when is the
7 last time -- has that ever happened in your career?
8 A. Oh, many times.
9 Q. And when has that happened?
10 A. As a professor, I frequently would consult
11 with physicians from the region we were serving and

12 accept their findings and consult with them about
13 appropriate diagnostic and therapeutic procedures.
14 It's a time-honored role of consultants. And I was a
15 consultant.
16 Q. But here you didn't consult with any of those
17 physicians, did you?
18 A. No, but I was asked an opinion.
19 Q. Doctor, are the opinions that you've reached
20 here today regarding cancer causation and addiction, do
21 you believe those opinions are within the subject
22 matters that are in your area of medical specialty or
23 expertise?
24 A. Yes, they are.
25 Q. And I believe you've testified in other

19

1 cases, am I correct? Your medical specialty and
2 expertise is in three areas: One, childhood
3 development; two, pediatrics; and three, child
4 psychiatry. Is that correct, sir?
5 A. And fourth, public health.
6 Q. And fourth, public health.
7 Q. So, those are your four areas of medical
8 specialty?
9 A. Yes.
10 Q. Now, in connection with -- let me ask you
11 about -- let me ask you about Mary Farnan. In
12 connection with Mary Farnan's lung cancer caused by
13 smoking, does that opinion relate to your expertise in
14 childhood development?
15 A. Yes.
16 Q. In what way?
17 A. Well, I have specialized in the psychological
18 and the social development of children, including
19 adolescents.
20 Since she initiated her pattern of smoking at
21 age 11. And I've been involved in studies of risk
22 taking behavior on the part of young people. I think
23 that it was entirely in keeping with the expertise that
24 I have.
25 Q. You may have misunderstood my question.

20

1 You're not talking about your opinion about her
2 addiction; is that correct?
3 A. I think you asked about her medical
4 condition.
5 Q. Maybe I misspoke. Let me rephrase the
6 question.
7 In connection with the opinion that you gave
8 the jury about what caused Mrs. Farnan's cancer being
9 caused by smoking, that opinion. Are you with me?
10 A. Yes.
11 Q. As far as that opinion, is that opinion
12 related to your expertise in childhood development?
13 A. Well, that's related in part to that
14 expertise, but in part to my status as a professional
15 in the field of public health.
16 Q. Then how does it relate to childhood
17 development, so I understand?
18 A. Well, the process of the development of
19 cancer is a developmental process. And she initiated
20 smoking early. That's part of the medical history.
21 And I have some expertise in that area as well as in
22 the field of public health.

23 Q. I understand your public health experience.
24 But as far as childhood development, is there something
25 about childhood development that aided your expertise

21

1 in determining that her lung cancer was caused by
2 smoking?

3 A. Well, my knowledge of what the early onset of
4 smoking has to do with the later development of cancer,
5 yes, those are relevant issues in her case.

6 Q. Did you diagnose people with lung cancer,
7 your young patients in your pediatrics practice?

8 A. I'm not certain what you're driving at.

9 Q. I'm sorry.

10 A. The history of cancer as a consequence of
11 cigarette smoking is a history of a latent period of
12 usually between 10 and 30 years or more. So that I
13 would not have been in a position to be making
14 diagnoses of lung cancer during the pediatric period.
15 But taking into account that history during the
16 pediatric period is very consequential for the ultimate
17 diagnosis.

18 Q. Well, you're board certified in the area of
19 pediatrics; is that correct?

20 A. That's correct.

21 Q. And describe -- what is the specialty of
22 pediatrics?

23 A. Specialty of pediatrics is all the medical,
24 and psychological and social conditions related to
25 children, which include adolescence, takes us up

22

1 through adolescence.

2 Q. Have you ever been board certified to
3 practice in the area of oncology, which is the study of
4 cancer?

5 A. No.

6 Q. Have you ever been board certified to
7 practice in the medical specialty of pulmonology --

8 A. No.

9 Q. -- which is the study of lungs?

10 A. No.

11 Q. Have you ever been board certified as a
12 pathologist, the study of tissue?

13 A. No.

14 Q. Have you ever been board certified as a
15 cytologist, the study of cells?

16 A. Cytology.

17 Q. Cytology?

18 A. No.

19 Q. Let me ask you some questions. The opinions
20 that you've reached here and told the jury about
21 regarding Mrs. Farnan and Mr. Amodeo's cancer and that
22 smoking caused their cancer, in reaching those
23 opinions, did you take into consideration that both
24 lung cancer and laryngeal cancer are what are called
25 multifactorial diseases?

23

1 A. Yes, I did.

2 Q. By the way, for the jury to understand,
3 multifactorial means that with both of those diseases
4 there are different and multiple factors that can cause
5 the disease; is that correct?

6 A. That's a correct formulation, yes.

7 Q. In reaching these specific medical causation

8 opinions, did you take into consideration that it's
9 well accepted within the medical community that people
10 who never smoke cigarettes can get lung cancer?

11 A. Yes, that does happen.

12 Q. You took that into consideration; is that
13 correct?

14 A. That's correct.

15 Q. Did you take into consideration, in reaching
16 your opinions, the other side of the coin that many,
17 many people who smoke cigarettes on a regular basis in
18 fact do not get lung cancer?

19 A. That's correct.

20 Q. In fact, am I correct that in reaching these
21 opinions you considered that the statistics show that
22 90 percent of regular lifetime smokers never develop
23 lung cancer?

24 A. That's correct.

25 Q. Now, in reaching --

24

1 A. But I should add that smokers of a pack a day
2 had a tenfold greater chance of getting cancer than
3 nonsmokers.

4 Q. I understand --

5 A. So, I just want to get the numbers right.

6 Q. There's no question in your mind, is there,
7 that smoking does increase the risk that someone will
8 acquire lung cancer; is that fair to say?

9 A. Yes, I think it's fair to say that even the
10 cigarette companies have finally admitted that.

11 Q. And in reaching your opinions here, did you
12 consider that -- let me ask you this: In the medical
13 community today, am I correct, the medical community
14 today still does not necessarily understand why it is
15 that one person will develop cancer in response to
16 cigarette smoking and others will not?

17 A. That's correct.

18 Q. And even today medical science believes that
19 there are differences in individual susceptibility,
20 based on genetics and other factors?

21 A. Yes, that's correct.

22 Q. Specifically with Mrs. Farnan, I believe you
23 told us specifically that her type of lung cancer was,
24 did you say large cell adenocarcinoma?

25 A. That's right, and squamous cell.

25

1 Q. And squamous cell carcinoma?

2 A. That's correct.

3 Q. Now, sir, do you believe that you have the
4 medical training and experience that's necessary to
5 enable you to render an expert opinion as to the
6 specific cell type of a particular lung cancer tumor?

7 A. No, I rely on the pathologists. That is a
8 source of my information. And in her case she was at
9 one of the great medical centers of this country. So I
10 assume that the pathologists who rendered those
11 opinions are reliable pathologists.

12 Q. Let's take it one step at a time. First step
13 is, I take it you, yourself, you don't, yourself, have
14 the medical expertise to actually determine the actual
15 cell type of a tumor; is that correct?

16 A. Well, I have some modest expertise.

17 Q. You do believe you have the expertise to
18 actually identify cell types of a tumor?

19 A. No. I don't regard myself as a pathologist.
20 All I'm saying is I have looked at such cells and have
21 seen them under the microscope.

22 Q. All right. Am I right, sir, there actually
23 are, there are four different major lung cancer cell
24 types that account for about 95 percent of all primary
25 lung cancer? Is that correct?

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1 A. That's right.

2 Q. In fact, let me show you a chart, I hope I've
3 summarized it correctly.

4 MR. WEBB: I'm going to mark this chart with
5 my next exhibit number, which I have -- here I'm told
6 is, of all things, 36900. And I'm going to mark --
7 give a copy to Mr. Rosenblatt, hand a copy to the
8 (Defendants' Exhibit 36900 was marked for
9 identification.)

10 Q. I'll now hand you what I have marked, it's a
11 Defendants' Exhibit 36900 for identification, and ask
12 you, does that chart accurately set forth your
13 understanding of the four major types of lung cancer
14 cells?

15 A. Yes, I think it does.

16 Q. And let's just go through that quickly.
17 Adenocarcinoma, underneath that is this sub-type that I
18 won't try to pronounce it, others can, but we're
19 calling it BAC; is that fair, Doctor? It's a sub-type?

20 A. Okay.

21 Q. My question is: Is BAC a sub-type of
22 adenocarcinoma?

23 A. That's correct.

24 Q. Then you have these other cell types:
25 Squamous cell, large cell and small cell. Is that

27

1 correct, sir?

2 A. That's correct.

3 Q. Am I correct, sir, that in your career as an
4 active physician, you've never personally treated any
5 person with lung cancer; is that correct?

6 A. That's correct.

7 Q. And in your career, you've actually never
8 treated any patient who had the BAC type of lung
9 cancer, have you?

10 A. No, I have not.

11 Q. And you've never diagnosed anyone with BAC
12 lung cancer, have you, sir?

13 A. No, I have not.

14 Q. Have you actually ever been the doctor on a
15 patient matter where you actually were the physician
16 that had the responsibility to determine the actual
17 cell type?

18 A. No, I have not.

19 Q. And in this particular case, have you
20 actually reviewed the underlying medical evidence such
21 as the chest x-rays or the MRIs or the pathology, the
22 actual pathology slides?

23 A. No, I have not reviewed them. I've only read
24 the reports of the primary physicians and the
25 specialists in pathology who have reviewed those.

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1 Q. First let's take -- in order to determine
2 which cell type a given cancer tumor is, the doctor
3 that would do that would be a pathologist; is that

4 correct?
5 A. That's correct.
6 Q. And the pathologist is a medical specialist
7 in the area of studying tissue; is that correct?
8 A. That's correct.
9 Q. And you've never -- you're not a pathologist?
10 A. That's correct.
11 Q. You've not had any training in pathology?
12 A. Well, as a medical student, yes.
13 Q. But as a practitioner?
14 A. No, not as a practitioner.
15 Q. You've not practiced medicine as a
16 pathologist; is that correct?
17 A. That's correct.
18 Q. And do you agree, Doctor, that in your
19 practice as an active practitioner, you always believed
20 that the most competent medical specialist to determine
21 a cell type would be a pathologist; is that fair to
22 say?
23 A. That's correct.
24 Q. For example, if there was a disagreement in
25 this courtroom, in this case, as to the cell type of

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1 Mary Farnan's tumor in her lung, the most competent
2 people to address that would be pathologists; is that
3 fair to say?
4 A. That's correct.
5 Q. It would not be you?
6 A. No, it would not be.
7 Q. Let me just -- I don't think I asked you
8 this. Did you ever ask -- strike the question.
9 Did you ever ask Mr. Rosenblatt that, because
10 pathology and the identity of the type of cell was
11 important in this case, did you ever ask Mr. Rosenblatt
12 if you could actually look at the pathology slides, for
13 example?
14 A. No, I did not.
15 Q. If you did look at the pathology slides,
16 would that be helpful to you?
17 A. I would still rely on the pathologist.
18 Q. But you have the ability to look at pathology
19 slides and make some judgments?
20 A. Yes, I do.
21 Q. But you didn't ask to look at them here?
22 A. No.
23 Q. Doctor, is it correct that you recognize that
24 in trying to determine what causes a particular
25 person's cancer, that one of the important things that

30

1 a doctor is supposed to look at is the patient's family
2 history of cancer; is that correct?
3 A. That's correct.
4 Q. And the reason for that is because by
5 studying a person's family history, as a physician, you
6 might learn things that would tell you that there's a
7 family history as a risk factor for cancer; is that
8 fair to say?
9 A. That's correct.
10 Q. And people do inherit certain genetic
11 characteristics that may make them more susceptible to
12 certain types of cancer?
13 A. Yes, that's appropriate.
14 Q. So therefore when you -- you did review

15 certain depositions given by Mary Farnan and you did
16 look at -- from looking at those depositions, you were
17 trying to get a sense or a feeling about her family
18 history for cancer; is that fair to say?

19 A. That's correct.

20 Q. And you concluded, did you not, that after
21 you reviewed Mrs. Farnan's deposition, you concluded
22 that she had an extensive history of cancer in her
23 family; is that correct?

24 A. That's correct.

25 Q. That was your opinion?

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1 A. Yes, that's correct.

2 Q. Now, what you learned -- and I'll go through
3 this quickly, and if you need to see her deposition, I
4 have it here. But tell me what you learned from
5 reviewing Mrs. Farnan's deposition concerning family
6 history for cancer, what you learned.

7 First of all, she had a maternal grandfather
8 by the name of Perry Beers -- I believe it's
9 B-E-E-R-S -- who died after being diagnosed with a mass
10 on his lung suspected of being lung cancer; is that
11 correct?

12 A. Suspected but never proven.

13 Q. Suspected, is that correct?

14 A. That's correct.

15 Q. And you learned that Ms. Farnan's aunt, Helen
16 Beers Smith, died of a breast and brain cancer at the
17 age of 52; is that correct?

18 A. That's correct.

19 Q. And you learned that Mrs. Farnan's uncle,
20 whose name is Robert Farnan, that he died of throat
21 cancer; is that correct?

22 A. Well, I'm not sure that that's correct. I
23 think it was his wife.

24 Q. Maybe I have it wrong. Let's check, because
25 I don't want to mislead you. Let me get that right

32

1 now.

2 Q. I'm going to show you actually -- actually,
3 I'm going to give you Mrs. Farnan's deposition. The
4 reason you had Mrs. Farnan's deposition is because
5 Mr. Rosenblatt or his office sent that to you so that
6 you could rely upon that in reaching your medical
7 opinions; is that fair to say?

8 A. That's correct.

9 Q. And I don't believe Mr. Rosenblatt has given
10 that to you. So I actually had put into a binder here
11 everything that I understood Mr. Rosenblatt's office
12 had sent to you, including the depositions. And I'm
13 going to mark this with the next number, which is
14 36901, hand it to you and let me explain what I -- the
15 medical records are repeated in here. But there's also
16 two of her depositions, tab 2, you actually got two
17 deposition transcripts for Mrs. Farnan?

18 A. Only one.

19 Q. Do you remember what date it was?

20 A. No, but I think it was a second one, it was
21 not a first one.

22 Q. Let me hand this to you.

23 A. Because in it, an earlier deposition is
24 referred to, so I would assume I saw the second
25 deposition.

1 Q. I don't know what you saw.
2 THE COURT: Show him number 2, the second
3 one.
4 BY MR. WEBB:
5 Q. There's two depositions here marked, this is
6 one and the next one is back here, Doctor, and I don't
7 know which one you were given.
8 THE COURT: Do you have a copy?
9 MR. WEBB: And I have an extra copy.
10 THE COURT: No, that's not what I was asking
11 for. I was asking Mr. Rosenblatt if he perchance had a
12 copy of the deposition that he did send him.
13 THE WITNESS: This is the one that I recall,
14 it starts at 3:00 p.m. That's the one I recall
15 reviewing. And in this there's reference to an earlier
16 deposition that I didn't see. So this has got to be
17 it.
18 BY MR. WEBB:
19 Q. All right, just for the record, that's a
20 deposition that is dated -- do you see it, sir?
21 A. December 14th, 1998.
22 Q. That's right. Now, there's an earlier
23 deposition that Mrs. Farnan gave, which is here, which
24 is dated November 12th, 1998; do you see that, sir?
25 A. That's correct.

1 Q. And you did not receive that deposition?
2 A. I don't think so, no.
3 Q. Do you know why you didn't receive that
4 deposition?
5 A. No.
6 Q. If you were -- this question I just asked you
7 about, if you look, if you look at the deposition,
8 Mr. Rosenblatt did not send you, but look at page 93.
9 You'll see the page numbers there. Find 93.
10 I can help you.
11 A. I've got it.
12 Q. If you see right at the top of page 93, the
13 question was asked of Mrs. Farnan: So your uncle
14 Robert, you believe, died of throat cancer?
15 And the answer was "Yes."
16 Do you see that?
17 A. You said page --
18 Q. 93. Page 93?
19 A. What was the question?
20 Q. I was only asking you whether her uncle
21 Robert had died of throat cancer, according to her
22 testimony?
23 A. Yes, she said yes.
24 Q. That's all.
25 A. But my recollection is that that gets

1 corrected in the next deposition.
2 Q. And how was it corrected then?
3 A. That it wasn't her uncle, but it was his
4 wife.
5 Q. That died of throat cancer?
6 A. That's correct. I think. That's the way I
7 read it.
8 Q. Okay. I don't want to -- do you know --
9 A. All I'm saying is there is a correction to
10 this in the second deposition.

11 Q. Okay, do you know where that is? Maybe when
12 we take a break. It's not that important, Doctor.
13 Do you recall Mrs. Farnan testifying that she
14 recalls her Uncle Dexter died in the 1970s, and she
15 believes that he may have died of lung cancer?
16 That's not on that page. I'm just asking
17 from your recollection, sir, of her family history.
18 A. Yes, I think that's -- yes.
19 Q. And did you also learn that Mrs. Farnan's
20 half sister, Virginia Lamb Davis is still alive but had
21 a brain tumor removed in recent years?
22 A. Yes, but I understand that that was a benign
23 tumor.
24 Q. But from that you concluded that Mrs. Farnan
25 had an extensive family history for cancer?

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1 A. That's a reasonable assumption.
2 Q. Now, you can put that down. If I need it
3 again, I'll tell you and I won't bother you.
4 Now, the left tumor that Mrs. Farnan --
5 strike that. The tumor in Mrs. Farnan's left lung,
6 when the pathologist Dr. Hackett examined it or
7 diagnosed it, he diagnosed it as being adenocarcinoma;
8 is that correct?
9 A. Large cell.
10 Q. And do you have the medical records there?
11 A. I think I do.
12 Q. If you look, I believe, at the bottom there
13 are some what they call Bates stamp numbers, and I
14 believe there's a page Bates stamped 00136.
15 A. 00136?
16 Q. Yes. 00136 are the last five numbers.
17 A. Okay, I'm close.
18 Q. And at least, you can look at the report, I
19 was looking down here where he concludes it's
20 adenocarcinoma of the lung. But if I'm missing
21 something, you can let me know.
22 A. Yes.
23 Q. And at least we know that that particular
24 lung type, that's the lung type from which BAC is a
25 sub-type; is that correct?

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1 A. That's correct.
2 Q. Now, I believe you told us, Doctor, this
3 morning when Mr. Rosenblatt was asking you questions
4 that you said that, regarding BAC, you had read over
5 the pathology report and you did not see any reference
6 to BAC; is that correct?
7 A. That's correct.
8 Q. And you yourself, you did not try to make
9 some independent investigation to determine if BAC was
10 present, did you?
11 A. No, I did not, but I read the record
12 carefully.
13 Q. What you're basing your view on is what you
14 see in a pathology report; is that correct?
15 A. That's correct.
16 Q. And did you not, for example -- well, let me
17 ask you this. Do you understand that this jury reached
18 a verdict on July 7th in this case where the jury
19 concluded that BAC is a lung cancer type that is not
20 caused by smoking cigarettes? Did you know that?
21 A. Yes, I'm aware of that.

22 Q. Did you know, coming in here today, that one
23 of the issues we're going to try to resolve in this
24 courtroom, as we proceed with the trial, is whether or
25 not Mrs. Farnan's adenocarcinoma was BAC; did you know

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1 that was one of the issues?

2 A. I assumed you would try hard to look at that.

3 Q. You knew it was an issue?

4 A. Yes. I assumed you would look hard at that.

5 Q. Is that okay?

6 A. Well, perfectly reasonable, yes. Difficult
7 to do, but --

8 Q. Well, let's talk about it, I want to talk
9 about BAC for a little bit and you can help me out
10 here. When the pathologists study tissue removed from
11 a lung cancer tumor, after they diagnose
12 adenocarcinoma, the general type, most pathologists do
13 not feel any need to do the additional testing that
14 would be required or helpful to determine if it is of
15 the BAC sub-type; is that fair --

16 MR. ROSENBLATT: Objection. Objection. How
17 would this witness know what most pathologists --

18 THE COURT: He may or may not. He can answer
19 the question in that regard.

20 Overruled.

21 THE WITNESS: Do you want to rephrase the
22 question or restate the question?

23 BY MR. WEBB:

24 Q. I'll rephrase it, repeat it and if you don't
25 understand, I'll do it again.

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1 Sir, based on your -- I know you're not a
2 pathologist, but I'm asking do you know, generally from
3 your experience, that when pathologists read over a
4 slide and diagnose adenocarcinoma, that those
5 pathologists do not normally feel any need to do the
6 additional required testing to determine if it is of
7 the BAC sub-type, because that testing does not help or
8 affect the treatment that the patient needs to receive
9 for the adenocarcinoma?

10 A. Well, usually they can differentiate on
11 observation the types of cells that are there. And
12 since BAC has a rather specific cellular characteristic
13 and distribution in the lung, I would expect a
14 pathologist would record that in his written record.
15 And since they record this as large cell carcinoma, I
16 assume they looked for BAC and didn't find it.

17 Q. Actually, he recorded it, Dr. Hackett
18 recorded it as adenocarcinoma, did he not?

19 A. But it's referred to by many of the other
20 clinicians in the record as large cell carcinoma. And
21 they wouldn't say that if it weren't in the pathology
22 report somewhere.

23 Q. Well, I'm talking about, I'm sorry, so the
24 jury is with you and I, Dr. Hackett is the pathologist
25 that examined Mrs. Farnan's lung tissue from her tumor

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1 in connection with her left lobe, upper lobe lung
2 cancer tumor; is that correct?

3 A. That's correct.

4 Q. And Dr. Hackett -- you just looked at his
5 report, he concludes it's adenocarcinoma?

6 A. That's correct.

7 Q. Now, have you ever talked to -- have you ever
8 talked to Dr. Hackett to find out what he actually saw
9 on the slides?
10 A. No, I have not.
11 Q. Did you ever ask Mr. Rosenblatt to tell you
12 if he knew that question?
13 A. No, I did not.
14 Q. So you have no knowledge as to what's on the
15 slide or what Dr. Hackett may have seen on the slide?
16 A. No, but I have knowledge of what all of the
17 clinicians who have talked to Dr. Hackett have
18 recorded. And they record it as large cell carcinoma.
19 Q. Have you talked to any of them?
20 A. No, I have not.
21 Q. None of them?
22 A. No.
23 Q. Now, you are aware that there are additional
24 tests that Dr. Hackett could have done, but did not do,
25 if he wanted to determine if it was of the BAC

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1 sub-type; is that correct?
2 A. Well, I'm not aware of what additional tests
3 he may have done.
4 Q. You don't know what he did?
5 A. No.
6 A. From his report, can you tell if he did the
7 additional -- strike the question.
8 First of all, would you please tell the jury,
9 what are the additional tests that a pathologist should
10 do or could do to determine if an adenocarcinoma is of
11 the sub-type BAC.
12 A. Well, there are immunologic tests, but they
13 could do electron microscopic observations.
14 Q. Okay, let's take -- I'm sorry, I didn't mean
15 to interrupt. Any more?
16 A. There are now research methods, immunologic
17 methods that could be used.
18 Q. That's what I want to talk about, let's find
19 out what those are so the jury understands.
20 If Dr. Hackett had wanted to, there are
21 certain -- is immuno stain; is that the right term?
22 A. That's a correct term.
23 Q. There are certain immuno stain tests that
24 could be done that would be helpful to determine if a
25 particular adenocarcinoma was of the BAC sub-type; is

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1 that fair to say?
2 A. Yes.
3 Q. Immuno stain is an effort to stain substances
4 in the cells that would reveal if the cells were
5 creating antibodies to certain and various proteins; is
6 that correct?
7 A. Yes, that's the basis for immunologic tests.
8 Q. There are many different types of immuno
9 stains. And which one you use depends on which protein
10 you're staining for; is that fair to say?
11 A. That's correct.
12 Q. What immuno stain should Dr. Hackett have
13 used if he wanted to go further and determine if
14 Mrs. Farnan's adenocarcinoma was BAC?
15 A. Well, he could have used whatever appropriate
16 ones there were. But I assume that he didn't feel that
17 that was necessary or desirable.

18 Q. Well, first of all --
19 MR. ROSENBLATT: Excuse me, Your Honor.
7 BY MR. WEBB:
8 Q. Let me ask the question again.
9 Would you please tell the jury, if
10 Dr. Hackett wanted to find out whether or not this
11 particular adenocarcinoma cell tumor, whether or not
12 BAC cells were present, tell the jury what immuno
13 stains should Dr. Hackett have used?
14 A. Well, he should have used the appropriate
15 immuno stains for that particular cell type.
16 Q. And what would that be?
17 A. Well, I don't have that expertise.
18 Q. So you don't know?
19 A. No, I wouldn't know precisely. But I do know
20 that if he thought it would make a difference in the
21 treatment of a patient, that he would have done it.
22 Q. Well, first of all, but you don't know what
23 test it would have been?
24 A. No, not -- well, one specifically chooses the
25 appropriate antigens depending on the cell type that

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1 one is trying to match.
2 Q. Now, are you familiar for example with what
3 is known as an H&E stain?
4 A. No, I'm not.
5 Q. You don't know whether that stain would be
6 one that a pathologist would use if the pathologist
7 wanted to find out if it was BAC?
8 A. No.
9 Q. What we do know is that we do know, from
10 reading over Dr. Hackett's report, you don't see that
11 he did any of these immuno stains, do you?
12 A. No, I don't know.
13 Q. You don't see it on his report is what I'm
14 asking?
15 A. That's correct.
16 Q. And you also do know that there's a very good
17 reason why a pathologist wouldn't care if it's BAC, and
18 isn't that because you don't need to know that to
19 render proper treatment to Mrs. Farnan, do you?
20 A. That's correct.
21 Q. Thank you.
22 Now, you also said that Dr. Hackett, if he
23 wanted to go further and see if that adenocarcinoma in
24 Mrs. Farnan was a BAC cell type, he could have used an
25 electron microscope; is that correct?

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1 A. Well, that's one way.
2 Q. You mentioned that a moment ago.
3 A. Yes.
4 Q. That's a more sophisticated test; is that
5 correct?
6 A. That's correct.
7 Q. And you don't see, on Dr. Hackett's report,
8 there's no reflection that he did an electron
9 microscope examination; is that correct?
10 A. That's correct, because that's not done in
11 routine clinical practice.
12 Q. You don't need to do that to treat
13 Mrs. Farnan, do you?
14 A. That's correct.
15 Q. And if we have to discover or know that

16 because of some issue in this courtroom, we'll have to
17 go further than Dr. Hackett went; is that correct?
18 A. Well, I'm not sure how far he went; I only
19 know what's on the record.
20 Q. You haven't talked to him?
21 A. That's correct.
22 Q. Did you try to talk to him, by the way?
23 A. No.
24 Q. Do you think it would have been helpful to
25 talk to him?

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1 A. Not particularly. No, not in terms of the
2 clinical issues in this case.
3 Q. I'm talking about your testimony here this
4 morning that Mrs. Farnan did not have BAC. Would that
5 have been helpful for you to sit down with Dr. Hackett
6 and talk that through and see what he saw on the
7 slides?
8 A. No, because I think if he saw that, he would
9 have recorded it in the record.
10 Q. You haven't talked to him, have you?
11 A. No, I haven't. But I know that he's a
12 reliable pathologist and he includes in his report,
13 comprehensive report, which would have given the
14 specific types.
15 Q. I'm sorry. I thought you said his report
16 does not reflect that he did not go ahead and do these
17 more sophisticated tests, at least based on his report?
18 A. That's correct, because those are largely
19 research tests.
20 Q. Now, let's -- let me ask you some questions
21 about BAC, and the characteristics of BAC. I earlier
22 established you've never actually diagnosed BAC in a
23 patient; is that correct?
24 A. That's correct.
25 Q. Or treated a patient with BAC?

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1 A. That's correct.
2 Q. But you're generally aware of the major
3 characteristics of BAC based on general medical
4 training; is that fair to say?
5 A. That's correct.
6 Q. And am I correct there are two somewhat major
7 or universal characteristics that are present with BAC;
8 is that correct?
9 A. That's correct.
10 Q. One of the more significant or universal
11 characteristics for BAC is that it's a type of lung
12 cancer frequently found in the area of the lungs that's
13 called the periphery of the lungs; is that correct?
14 A. That's correct.
15 Q. Was Mrs. Farnan's in the periphery of the
16 lung?
17 A. Well, she had a pretty massive lesion, so you
18 couldn't say it was only in the periphery.
19 Q. Was part of it in the periphery?
20 A. Yes.
21 Q. Another characteristic we have of BAC is that
22 when you examine the architecture and structure of BAC
23 cells, they can take on the characteristic appearance
24 of the air sacs of the lung; is that correct?
25 A. That's correct, that's the alveolar part of

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1 bronchoalveolar.
2 Q. If you were going to look at the pathology
3 slides, you would be looking for characteristics as to
4 whether or not there were more characteristics of the
5 small airways of the lung; is that correct?
6 A. That's correct.
7 Q. But you did not examine the slides?
8 A. That's correct.
9 Q. And am I also correct, sir, that another
10 characteristic of BAC that appears in the medical
11 literature is that BAC does seem to occur more
12 frequently in younger females; is that correct, sir?
13 A. That's correct, yes.
14 Q. And you would agree that, tragically, Mary
15 Farnan's cancer hit her at a very young age; is that
16 fair to say?
17 A. That's correct.
18 Q. I believe, if I can read the records
19 correctly, that pain in her left shoulder that was back
20 in 1995 was probably this cancer tumor; is that
21 correct?
22 A. That's very likely the case, yes.
23 Q. So she would have been 38, 39 years old?
24 A. That's correct.
25 Q. Now, another characteristic of BAC is when

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1 you look at the nucleus of the cells -- well, let me
2 ask this question. Strike the question.
3 If pathologists want to determine if a
4 particular lung cancer is BAC, do they sometimes study
5 the nucleus of the cells to see if they can spot
6 characteristics of BAC in the cells?
7 A. Well, yes.
8 Q. Is that fair to say?
9 A. That would be.
10 Q. And actually, am I right the study of the
11 characteristics of individual cells or groups of cells,
12 that's called cytology?
13 A. That's correct.
14 Q. And there are some pathologists who actually
15 specialize in the study of cells and they're called
16 cytologists?
17 A. That's correct.
18 Q. Some pathologists are also cytologists; is
19 that correct?
20 A. That's correct.
21 Q. And some pathologists are not cytologists?
22 A. That's correct. Well, there's a field of
23 cytologists who are technicians, who may not be
24 pathologists.
25 Q. Do you agree that a person who was both

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1 qualified as a pathologist and a cytologist, in
2 cytology, that would be the type of person that would
3 have the most expertise to study individual cells in
4 the nucleus to see if characteristics of BAC are
5 present?
6 A. That's correct.
7 Q. Now, when you study the nucleus of the
8 individual cells of BAC tumors, one of the major
9 characteristics you're looking for is to see if you can
10 find a substantial number of what was called
11 binucleated cells?

12 A. Binucleated cells?
13 Q. Yes.
14 A. Yes, that's one type. It's not the only
15 type.
16 Q. I was just asking if it was one. I'm just
17 asking whether binucleated is what you see, is that
18 they have more than one nucleus?
19 A. That's correct.
20 Q. And if they have more than one nucleus,
21 they're called binucleated or multinucleated?
22 A. That's correct.
23 Q. And if a pathologist or cytologist would see
24 a large number of multiple nucleus in cells, that would
25 be one indication, one indication that might indicate

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1 the presence of a BAC?
2 A. Only one, though.
3 Q. That's all I ask. Is it one?
4 A. You can't take that out of context, because
5 they have to look at the complex of cells.
6 Q. I'm just asking if it's one characteristic?
7 A. It's one characteristic.
8 Q. And I take it -- now, I know you didn't do
9 any pathology, but did you do any examination of any
10 individual cells to see if there was any nucleus issues
11 here?
12 A. No. I've not looked at the slides.
13 Q. So you would have no way of knowing whether
14 there's binucleated cells there or not?
15 A. No, I only know what's in the report.
16 Q. Another indication of a BAC cancer tumor
17 would be if the cytologist or pathologist, if they see
18 holes in the membrane of the cells, those are called
19 vaculi?
20 A. Vacuoles.
21 Q. V --
22 A. V-a-c-u-o-l-e-s.
23 Q. Vacuolous are microscopic holes in the
24 membrane of the cell; is that correct?
25 A. Well, or it could be in the cell. Not in the

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1 membrane, usually in the cell.
2 Q. If a cytologist saw a lot of those holes in
3 many different cells, is that another indication,
4 another at least indication?
5 A. Could be, could be. But out of context.
6 Q. Pardon me?
7 A. But you can't take that out of context. It's
8 how a pathologist looks at the totality makes the
9 difference.
10 Q. I understand. We're talking about the
11 different things that might be an indication, is this
12 one of the things that might be an indication?
13 A. Yes, but it could be characteristic of many
14 other type of cancer, vacuoles are frequently found in
15 cancer cells.
16 Q. Do you know whether any vacuoles were found
17 here with Mrs. Farnan's cells?
18 A. No, I don't think there was that detailed of
19 description in the reports that I have read.
20 Q. And you didn't examine the slides, so you
21 don't know if they were there?
22 A. That's correct.

23 Q. Another characteristic of BAC is that it can
24 spread through the air inside a person's lung; is that
25 correct?

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1 A. Through the airways.

2 Q. Through the airways; is that correct?

3 A. That's correct.

4 Q. And because BAC can spread through the
5 airways of the lungs, that means that BAC cancer tumors
6 sometimes can appear in different places of the same
7 lung and sometimes it can occur in both lungs; is that
8 correct?

9 A. Well, but that's, that's not exclusively true
10 for BAC; that's true for other forms of lung cancer.

11 Q. I was just asking whether if that's one
12 characteristic or trait.

13 A. Well, it's a potential characteristic. It
14 has the appearance in another lung is what I'm
15 referring to, particularly.

16 Q. We do know that Mrs. Farnan unfortunately
17 developed lung cancer in both the right and the left
18 lungs; is that correct?

19 A. That's correct. But that's not exclusive to
20 BAC.

21 Q. I just asked you if it's a characteristic,
22 sir.

23 Now, let me move on to Mr. Amodeo and your
24 opinions about his throat cancer. You've told us that
25 in your opinion Mr. Amodeo's laryngeal cancer was

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1 caused from smoking cigarettes; is that correct?

2 A. That's correct.

3 Q. And again, I won't go back through, you have
4 based that by looking at records, not any medical exam
5 or medical test; is that correct?

6 A. That's correct.

7 Q. And there is a particular type of medical
8 specialty where doctors, where there are doctors that
9 are trained in diagnosing and treating throat cancer;
10 is that correct?

11 A. That's correct.

12 Q. What is that specialty called?

13 A. Otolaryngology. Sometimes
14 otorhinolaryngology.

15 Q. If I were to call that an ear, nose and
16 throat specialist, would that be okay?

17 A. That's the usual.

18 Q. Have you ever practiced medicine as an ear,
19 nose and throat specialist?

20 A. No, but during the course of my pediatric
21 training, during the course, the acute infectious
22 diseases like diphtheria that we saw then, the
23 pediatricians had to be very skillen in
24 otolaryngoscopic examinations and ailments.

25 Q. Have you, for example, recently practiced in

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1 the area of ear, nose an throat specialty?

2 A. No.

3 Q. Am I right, sir, even with your vast
4 experience in the medical profession, which no one
5 could ever question, when it came to diagnosing throat
6 cancer, you would still defer a patient to an ear, nose
7 and throat specialist, and you would not make the

8 diagnosis yourself; is that correct?
9 A. That's correct.
10 Q. And so here, if Mr. Amodeo came to see you,
11 you would not diagnose his throat cancer, you would
12 send him to an nose and throat specialist?
13 A. That's correct.
14 Q. Did you consult with any ear, nose and throat
15 specialist before you reached your opinion as to what
16 caused his laryngeal cancer?
17 A. No, I did not.
18 Q. Did you consult with any nose and throat
19 textbooks or medical specialty books before you reached
20 your opinion that his throat cancer was caused by
21 smoking?
22 A. No, I did not.
23 Q. And again, what you -- am I right, what you
24 relied on would be the medical records Mr. Rosenblatt
25 sent you and Mr. Amodeo's depositions that

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1 Mr. Rosenblatt sent you?
2 A. That's correct.
3 Q. Did you have one of Mr. Amodeo -- how many
4 depositions of Mr. Amodeo did you have?
5 A. One.
6 Q. And I think I asked you this earlier. When
7 you saw those records, Mr. Amodeo's records, didn't you
8 think they were incomplete and call up Mr. Rosenblatt's
9 office and ask for more?
10 A. No, I don't recall.
11 Q. Let me see if I can refresh your memory on
12 this, doctor.
13 I'm going to show you an excerpt from your
14 deposition to help you refresh your memory. This is
15 deposition you gave on October 6th, 1999. I Xeroxed
16 the first page. Then I'm going to ask you to review
17 what is marked as page 9. I've highlighted a certain
18 segment, and ask you to read it to see if it refreshes
19 your memory as to whether you asked Mr. Rosenblatt's
20 office for some additional medical records.
21 A. The question is: Did you ask for additional
22 medical records regarding Mr. Amodeo? And the answer
23 was: I did ask whether there were any additional
24 medical records and was told that that was all that was
25 available.

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1 Q. Did you ask that question, did you -- did you
2 call them up and ask them that after you got the
3 records?
4 A. The only way I could have done it would have
5 been by phone. But I don't recall.
6 Q. Did you call up and ask for more records
7 because you thought that the records that had been sent
8 to you, which is marked as Plaintiffs' Exhibit 1B, did
9 you think that these records were not adequate?
10 A. No, I thought they were adequate.
11 Q. Why did you call for more?
12 A. I just wanted to know whether I had
13 everything.
14 Q. Did you ever receive any more records at any
15 time?
16 A. No.
17 Q. Again, did you examine any of Mr. Amodeo's
18 pathology materials, any pathology slides?

19 A. No, I did not.
20 Q. Did you interview any of the medical doctors
21 who treated Mr. Amodeo in 1987 in connection with
22 diagnosing and treating his throat cancer?
23 A. No, I did not.
24 Q. So again, the only information you had is
25 what Mr. Rosenblatt's office sent you?

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1 A. That's correct.
2 Q. Let me talk a little bit about the causes of
3 throat cancer. You told us earlier that it is what is
4 called a multifactorial disease, meaning there is more
5 than one cause? Is that fair to say?
6 A. That's correct.
7 Q. And there are other things that can cause
8 throat cancer besides smoking?
9 A. Yes.
10 Q. And people who don't smoke cigarettes at all
11 do get throat cancer; is that correct?
12 A. That's a possibility.
13 Q. And the vast, vast majority of people who
14 smoke cigarettes do not get throat cancer; is that
15 correct?
16 A. That's correct.
17 Q. And the reason that you concluded that
18 smoking caused Mr. Amodeo's throat cancer is because
19 you looked at his smoking history and you didn't see
20 any other risk factor and therefore you concluded that
21 smoking caused his throat cancer; is that correct?
22 A. That's correct.
23 Q. Now, I want to talk to you about that you
24 didn't see any other risk factor and just ask you a few
25 questions about that, doctor.

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1 You do recognize that there are certain
2 specific occupational exposures where people encounter
3 substances, chemicals, et cetera in their occupations
4 that can be risk factors for throat cancer; is that
5 correct?
6 A. That's a possibility.
7 Q. And you are aware that there are occupational
8 exposures to throat irritants that are viewed as risks
9 for throat cancer; is that correct?
10 A. That's correct.
11 Q. And when you read -- all you had before you
12 was Mr. Amodeo's deposition when you were looking for
13 other risk factors?
14 A. That's correct.
15 Q. You did not talk to him to see if he might
16 tell you of any other risk factors?
17 A. That's correct.
18 Q. And you didn't see any other risk factors in
19 reviewing his deposition?
20 A. Well, I thought of the possibility of what he
21 reported in his occupation. And that is that he was
22 exposed to some wood dust, saw dust.
23 Q. Did you look into how extensive his exposure
24 was to saw dust?
25 A. I only had it from the record, from the

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1 deposition.
2 Q. Did you see any indication in the records, in
3 the medical records Mr. Rosenblatt sent you, did you

4 see any indication that Mr. Amodeo's exposure to wood
5 dust was so intense that he sometimes had to actually
6 blow the wood dust out of his nostrils, out of his
7 nose?
8 A. No, I recall his indicating that he wore a
9 mask if he thought the exposure would be considerable.
10 Q. I'm going to mark this next exhibit as
11 Defendants' Exhibit 36909, for identification.
12 (Defendants' Exhibit 36909 was marked for
13 identification.)
14 Q. And I will tell you, Doctor, this is a record
15 from a Dr. Collins, I'm just going to hand it to you.
16 Do you see -- it's kind of small, there's a
17 date on there April 23rd, 1997; do you see that?
18 A. April.
19 Q. It's kind of hard to read, but I'll show you
20 where it is. It's a little faint.
21 Right here, sir. Right there is the date.
22 April 23rd, 1987, sir, do you see that?
23 A. Is that 23rd? Yes, I guess. Not very clear.
24 Q. And you see Mr. Amodeo's name at the top?
25 A. Yes.

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1 Q. And I've highlighted a portion of that
2 document where Mr. Amodeo reported -- this is probably
3 hard to read here.
4 You see where it says: Patient states he's
5 working unusually long hours and that he works in saw
6 dust, and he blows out a lot of saw dust.
7 Do you see that, sir?
8 A. I see that, yes.
9 Q. Now, this is, 1987 is at the time you learned
10 that Mr. Amodeo was having the severe throat problems
11 that eventually led to the diagnosis of throat cancer;
12 is that correct?
13 A. That's correct.
14 Q. Now, you did not see this -- this was not one
15 of the medical records that Mr. Rosenblatt sent you, is
16 it?
17 A. No, it isn't.
18 Q. Would you have liked to have seen that?
19 A. Well, it might have been helpful.
20 Q. And I believe you also told us in your
21 testimony that you were not aware of any literature
22 that would indicate that exposure to wood dust or saw
23 dust would create or increase the risk of laryngeal
24 cancer; is that correct?
25 A. That's correct.

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1 Q. Did you do a search, sir, to see if there was
2 such literature?
3 A. No, I didn't at that time. But I did check
4 with my consultant in occupational health, whom I
5 regard as one of the authorities in his field.
6 Q. Is that Dr. Abrams you told us about?
7 A. That's Dr. Abrams. And he knows of no such
8 association.
9 Q. Did Dr. Abrams mention to you a major study
10 done by Dr. Ernst Wynder on whether wood dust increases
11 the risk for laryngeal cancer?
12 A. No, he did not.
13 Q. Dr. Ernst Wynder may be one of the most
14 premier pioneers --

15 MR. ROSENBLATT: I'll object to his testimony
16 in terms of a question.
17 THE COURT: Just a minute. Two problems.
18 One, the name came up in Phase I.
19 MR. ROSENBLATT: Correct.
20 THE COURT: And, I guess, pretty much
21 familiar with Dr. Wynder. Let's talk about it sidebar.
23 BY MR. WEBB:
24 Q. Doctor, I take it you're familiar with a
25 smoking and health medical researcher by the name of

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1 Dr. Ernst Wynder; is that correct?
2 A. Oh, yes.
3 Q. And tell the jury who he is.
4 MR. ROSENBLATT: Your Honor, I'll object. I
5 think that the first question to ask is if he's
6 familiar with his study. And if he's not, doesn't
7 matter.
8 THE COURT: I think we have gone over who he
9 is in Phase I. I don't know that it's necessary to do
10 it again.
11 THE WITNESS: His name came up extensively in
12 Phase I.
13 BY MR. WEBB:
14 Q. Are you familiar with a study by Dr. Wynder
15 that concluded that occupations associated --
16 THE COURT: No conclusions. Subject matter
17 only.
18 MR. WEBB: Your Honor, he said he's not
19 familiar -- can I show him the article to refresh --
20 THE COURT: I think we first ought to
21 establish if he's aware of it. If he isn't aware of
22 it, so what? Then we go on from there. If he is aware
23 of it, then we can discuss it.
24 BY MR. WEBB:
25 Q. Are you aware of a study done by Dr. Wynder

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1 that connected the --
2 THE COURT: Then you go back to conclusion --
3 MR. WEBB: Otherwise I can't ask him.
4 THE COURT: -- that studied whether there was
5 a connection between --
6 BY MR. WEBB:
7 Q. Doctor, are you familiar with a study done by
8 Dr. Wynder to see if there was a connection between
9 wood dust exposure and laryngeal cancer?
10 A. No, I'm not familiar with that study.
11 Q. And you have not looked personally to see if
12 there was such a study?
13 A. No.
14 Q. If I were to show you the study, would you be
15 able to evaluate it and give us your opinion?
16 THE COURT: That would not be permitted.
17 MR. WEBB: Pardon me?
18 THE COURT: That would not be permitted.
19 BY MR. WEBB:
20 Q. Do you consider Dr. Wynder to be a reputable
21 researcher?
22 A. Yes.
23 Q. And if he, if there was such a study, would
24 you give credence to it?
25 MR. ROSENBLATT: Objection, Your Honor.

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1 THE COURT: Sustain the objection. Let's
2 move on.
3 BY MR. WEBB:
4 Q. Let me move on to your opinion --
5 THE COURT: May I ask a question? Would this
6 be a good time for a break?
7 MR. WEBB: Yes.
8 THE COURT: Let's take our afternoon break,
9 folks, same rules apply.
10 (The jurors exited the courtroom.)
11 THE COURT: We'll be in short recess.
12 (A short recess was taken.)
13 MR. REID: Your Honor, we had something we'd
14 like to take up. Could we excuse the witness, please?
15 THE COURT: All right.
16 (Dr. Richmond left the courtroom.)
17
18 THE COURT: All right, folks. Do we have the
19 witness?
20 So there will be no confusion in the jury's
21 mind, I had made a ruling regarding the use of an
22 article by Dr. Wynder, I've changed my mind on that.
23 I'm going to let counsel talk about that with the
24 witness.
25 (Defendants' Exhibit 36910 was marked for
identification.)
19
20 MR. WEBB: Thank you, Your Honor.
21 BY MR. WEBB:
22 Q. Dr. Richmond, I'm going to give you an
23 exhibit, Defendants' Exhibit 36910, which has been
24 marked for identification, what purports to be an
25 article by Dr. Wynder, hand it to you, ask you to look
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1 at it at this time, sir.
2 And my first question to you is: Have you
3 ever seen this study before?
4 A. I'm trying to find the journal title in which
5 this appears.
6 No, I've not seen this.
7 Q. I've highlighted certain -- well, let's show
8 the jury -- first of all, the title is Environmental
9 Factors in Cancer of the Larynx, A Second Look.
10 Do you see that, the title?
11 A. Yes.
12 Q. That's Dr. Ernst Wynder, the prominent
13 researcher; is that correct?
14 A. That's correct.
15 Q. The article is in a publication called
16 Cancer; is that correct?
17 A. That's correct.
18 Q. Is that a prominent, well respected
19 publication?
20 A. Yes.
21 Q. And I think the date is 1976; is that
22 correct?
23 A. Yes, October 1976.
24 Q. If you go back on the, the box on the first
25 page, that's where in the scientific studies they

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1 sometimes try to put a summary or a capsule of what's
2 in the study; is that correct?
3 A. That's correct.

4 Q. And I've highlighted a portion there which
5 I'll read: Occupations associated with wood exposure
6 were found to affect the development of laryngeal
7 cancer independently of smoking status.
8 Do you see that, sir?
9 A. Yes, I see that. But one has to look at the
10 context. There are many other factors in this article
11 that were considered.
12 Q. I understand --
13 A. This is only one small issue.
14 Q. Well, let's see, let's first of all, show the
15 jury the number of people in the study, according to
16 Dr. Wynder it was 258 men and 56 woman; is that
17 correct?
18 A. That's correct.
19 Q. With histological evidence of laryngeal
20 cancer?
21 A. That's correct.
22 Q. Now, laryngeal cancer, that's the type of
23 cancer that Mr. Amodeo had?
24 A. Well, that's one of the types. He had
25 pharyngeal cancer and cancer of the tongue, as well.

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1 Q. He had laryngeal cancer?
2 A. Yes.
3 Q. If we look over, I tabbed the page, you see a
4 red tab on your copy there, sir?
5 A. Yes.
6 Q. Dr. Wynder states that the difference in rate
7 of wood dust exposure between patient and controls was
8 statistically significant. Do you see that, sir?
9 A. Yes.
10 Q. Now, would this be something that you --
11 would have been helpful for you to know about before
12 you reached your opinion regarding Mr. Amodeo?
13 A. Well, it would have been helpful, but I don't
14 think it would have changed my mind.
15 Q. Well, let me ask you this: Did you have the
16 ability to do a research, a literature search, to see
17 if you could find this article?
18 A. No, I did not do a literature search.
19 Q. I said, did you have the ability to do so?
20 A. No, I didn't.
21 Q. You don't do literature searches?
22 A. Not personally.
23 Q. Do you have people that work for you that do
24 that?
25 A. Yes.

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1 Q. Did you ask any of them to do that?
2 A. No.
3 Q. Thank you.
4 A. But I did ask an expert.
5 Q. And he did not tell you about this article?
6 A. That's correct.
7 Q. Thank you.
8 A. But you have to remember, this is not on wood
9 exposure exclusively, this is many factors, and that's
10 what he's looking at. And you have to remember this is
11 a retrospective study. If you go to the front. So
12 this is not a case control anterospective study with
13 randomized subjects, which is a much better way to
14 determine, a much more accurate way to determine.

15 Q. You think Dr. Wynder did this the wrong way?
16 A. Well, it's one way, but it's not the best
17 way. Anterospective randomized trials are a better
18 way.
19 Q. But you do agree Dr. Wynder normally does
20 good research?
21 A. Well, he's made his mistakes, too.
22 Q. He never made them regarding smoking and
23 laryngeal cancer, I guess?
24 A. What's that?
25 Q. He doesn't make mistakes regarding smoking

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1 and laryngeal cancer, but he made mistakes in studying
2 wood dust and laryngeal cancer?
3 A. I said he made some mistakes. Most
4 investigators do.
5 Q. This statement here, he's actually focused on
6 wood dust, the rate of wood dust exposure between
7 patients and controls he says was statistically
8 significant?
9 A. That's correct.
10 Q. Do you disagree with that?
11 A. No, I don't disagree with it.
12 Q. Thank you.
13 Now, let me go on to your -- by the way, one
14 last question on your causation opinions, I've actually
15 went and got -- these records here, two boxes, did you
16 realize there were this many medical records in
17 connection with Mary Farnan's medical record?
18 MR. ROSENBLATT: I'm going to object to this
19 display, just taking two huge boxes, we don't know
20 what's in them, they haven't been identified.
21 MR. WEBB: They're Mary Farnan's medical.
22 THE COURT: Counsel's representation at this
23 point is that they are medical records of Mary Farnan.
24 MR. WEBB: That's my representation. I'm
25 asking if he knew --

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1 MR. ROSENBLATT: I didn't know there were
2 that many medical records, if that's true. From birth?
3 This is from birth?
4 THE COURT: I don't know, I don't know where
5 the argument is going at this point. If that be the
6 case and they are, so be it. Then you can expand on it
7 when you want, when you have time to look at the
8 records.
9 MR. WEBB: You want to look at these, I'll
10 put them down.
11 MR. ROSENBLATT: Right now, Dan --
12 MR. WEBB: I'm not trying to argue.
13 THE COURT: Ask your question.
14 BY MR. WEBB:
15 Q. Did you realize these three boxes, did you
16 have any idea there's this much medical records on
17 Frank Amodeo when you got the selected group from
18 Mr. Rosenblatt's office?
19 A. Well, I wouldn't know. How would I know?
20 Q. As an independent expert, do you think that's
21 something that you should look into as to what the
22 total scope of the medical records are before you reach
23 opinions?
24 A. Well, I thought the records that I had were
25 adequate for me to reach an opinion. I don't think I'd

1 need to go through all of those boxes to reach the
2 opinion that I reached.

3 Q. Okay. Let me move on to addiction then, to
4 the second area that you testified about this morning
5 when Mr. Rosenblatt was asking you questions.

6 As I understand it, you've reached the
7 medical conclusion that Mary Farnan was addicted to
8 nicotine in cigarettes; is that correct?

9 A. That's correct.

10 Q. And again, the source of information that you
11 had available to you to reach the conclusion about her
12 being addicted to nicotine, it's the same, it's the
13 medical records you identified; is that correct?

14 A. That's one source.

15 Q. And the deposition testimony?

16 A. That's correct.

17 Q. On one day, one deposition you told us?

18 A. That's correct.

19 Q. Do you know why Mr. Rosenblatt only gave you
20 one of Mrs. Farnan's depositions?

21 A. No, I don't.

22 Q. Now, in reaching your medical opinions
23 regarding Mary Farnan, you did not -- well, maybe I
24 should make sure. In connection with your addiction
25 opinion, did you not also perform, you did not examine

1 her I, take it; is that correct?

2 A. No, I did not.

3 Q. Or talk to her or interview her or take a
4 medical history; is that correct?

5 A. That's correct.

6 Q. Or perform any tests?

7 A. That's correct.

8 Q. Now, when you make a diagnosis of
9 addiction -- well, strike the question.

10 If I understand it correctly, when you were a
11 practicing physician, there were occasions when you
12 would diagnose one of your patients as being addicted
13 to something and thereby treat the patient; is that
14 correct?

15 A. That's correct.

16 Q. And am I correct that whenever, whenever you
17 would make a diagnosis of addiction, it would only be
18 after you had met with the patient in your office, in a
19 medical setting, in which you would have taken an
20 extensive medical history and have done physiological
21 or medical examinations; is that correct?

22 A. Well, unless I was consulting with another
23 physician.

24 Q. Sir, am I correct, in your entire career you
25 have never -- you have never diagnosed any patient as

1 being addicted to something without first talking to
2 the patient in a medical setting; is that correct?

3 A. Well, I don't think that's exclusively
4 correct, because I played a role as a consultant.

5 Q. Well, did you testify to that under oath in
6 your deposition?

7 A. I don't know whether it ever came up.

8 Q. I can help refresh. Let me show it to you.

9 October 6th. I'm going to show you again
10 your deposition of October 6th, 1999. And I'm going to

11 direct your attention to page 106, ask you to examine
12 it.
13 Were you asked the question: Have you ever
14 diagnosed in your practice any patient as being
15 addicted without talking to the patient? And your
16 answer was no.
17 A. Well, that's in my practice.
18 Q. That's what I asked.
19 A. You were asking me whether I ever made that
20 diagnosis.
21 Q. I asked you as a practicing physician whether
22 you had ever diagnosed any patient as being addicted to
23 something without first talking to the patient?
24 A. And in my response I put in a qualifier that
25 I have, however, participated in making the diagnosis

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1 as a consultant in addition to doing it as a
2 practitioner.
3 Q. But the other doctors --
4 A. I've done both.
5 Q. But the other doctor is the one that's
6 actually meeting with the patient and making the
7 addiction diagnosis?
8 A. That's correct.
9 Q. Because an addiction diagnosis has subjective
10 aspects to it; is that fair to say?
11 A. Well, that's correct. But a report of a
12 patient to another physician who consults me would be
13 acceptable to me as reliable information.
14 Q. Well, actually, by the way, addiction is a
15 psychiatric diagnosis; is that correct?
16 A. That's correct.
17 Q. And you're familiar with what is known as DSM
18 IV, are you not, sir?
19 A. That's correct.
20 Q. And tell the jury what DSM IV is.
21 A. That's the standard classified nomenclature,
22 classification of all psychiatric disorders.
23 Q. And tell me if I'm right, in a lay view, it's
24 a manual that is used by psychiatrists and other
25 doctors that sets forth the protocol and procedures

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1 doctors are supposed to follow to diagnose nicotine
2 dependence; is that correct?
3 A. That's correct.
4 Q. And that manual requires the doctor
5 diagnosing the addiction to nicotine to obtain a
6 detailed history from the patient; is that correct?
7 A. That's correct.
8 Q. And you did not do that here?
9 A. Not directly.
10 Q. And whenever possible, that says that you're
11 supposed to also review additional sources of
12 information such as medical records and interview
13 spouses and relatives; is that correct?
14 A. Well, that's part of it.
15 Q. In fact, in your practice, as I understand
16 it, in your practice when you would diagnose a patient
17 as being addictive, you often would talk to other
18 family members; is that correct?
19 A. That's correct.
20 Q. Because, again, when you're diagnosing an
21 addiction, there's a subjective reasoning you have to

22 go through as a doctor, is that correct, to finally
23 make that diagnosis?
24 A. That's correct.
25 Q. And it's hard to make a subjective judgment

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1 if you've never met the person you're judging?
2 A. Well, on the basis of collected data, one
3 could make that judgment if the informant was reliable.
4 In this instance, the informant, as recorded in the
5 deposition under oath, was recording their intake of
6 cigarettes and their reactions to smoking.
7 Q. But you couldn't -- in a medical interview
8 when you talk to the patient, you're asking follow-up
9 questions, am I correct, when they answer questions,
10 then you'll ask follow-up questions when you get
11 information?
12 A. That's correct.
13 Q. For example, you would ask a patient: When
14 you get up in the morning, what is the first thing that
15 you do? Do you smoke a cigarette?
16 That's one of the things that addiction
17 experts usually ask a patient, isn't it?
18 A. Well, that's one of the questions.
19 Q. Well, because you're looking to see how
20 strong the urge or desire or dependence is, are they
21 not?
22 A. Yes.
23 Q. When you look at Mrs. Farnan's deposition,
24 you don't know whether she grabbed a cigarette the
25 first thing when she got up in the morning, from her

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1 deposition, do you?
2 A. I think she describes herself as being
3 addicted.
4 Q. I'm sorry. Does she describe her smoking
5 habits in that kind of detail in her deposition as to
6 whether she smoked a cigarette?
7 A. That's not the only manifestation of
8 addiction of whether you reach for a cigarette when you
9 get up in the morning, it could be one manifestation
10 but not the only.
11 Q. Isn't the reason why you personally meet with
12 the patient, ask questions so that you can gather
13 information that you think is important to you?
14 A. Well, that's one way of going about it, yes.
15 Q. And there are certain physical and clinical
16 tests that are often used and used by you to diagnose
17 addiction; is that correct?
18 A. That's correct.
19 Q. These are tests that relate to heart rate,
20 respiratory rate and --
21 THE REPORTER: I'm sorry
22 MR. WEBB: I'll repeat the whole question.
23 Q. There are physical tests or clinical tests
24 that are used by psychiatrists and other doctors, when
25 they're called upon to determine someone is addicted,

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1 that includes things such as tests that measure heart
2 rate, respiratory rate and the effects of ingesting
3 certain substances, and the physical impact that has on
4 the body; is that correct?
5 A. That's correct.
6 Q. And you did not do that here?

7 A. That's correct.
8 Q. Did you ever ask Mr. Rosenblatt -- did you
9 ever say to Mr. Rosenblatt: Before I'm going to reach
10 an addiction opinion regarding Mrs. Farnan, I do need
11 to talk to her?
12 A. No, I never did.
13 Q. Did you ever try to interview any of
14 Mrs. Farnan's treating physicians to see what they
15 thought as far as whether she was addicted to
16 cigarettes?
17 A. No, I did not.
18 Q. Doctor, am I correct that -- well, one thing
19 we know, you can tell from reading Mrs. Farnan's
20 deposition, she clearly was someone who smoked
21 cigarettes on a regular basis for a sustained period of
22 time; is that fair to say?
23 A. That's correct.
24 Q. And, however, am I correct that you and other
25 addiction experts are well aware that just smoking

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1 cigarettes for an extended period of time, that's not
2 enough to establish addiction, is it?
3 A. No. But that's a precondition for addiction.
4 Q. You have to first find that; is that correct?
5 A. That's correct.
6 Q. And then DSM IV and DSM III go on to tell you
7 to look for other?
8 A. That's correct.
9 Q. And the reason for that, so the jury
10 understands, is addiction experts -- I'll ask you if
11 you include yourself in this: Addiction experts
12 believe that there are people who smoke cigarettes on a
13 regular basis and yet could not be characterized as
14 addicted; is that fair to say?
15 A. Well, that can be.
16 Q. And there are, you recognize there are people
17 who you actually characterize or other addiction
18 experts would characterize as being addicted to
19 nicotine, but they still, even though they meet the
20 definition, they go out and quit smoking?
21 A. Yes, that happens.
22 Q. That's correct, is it not?
23 A. Yes.
24 Q. We get the statistic that 50 million people
25 that used to smoke no longer smoke; is that correct?

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1 A. That's correct.
2 Q. I guess I need to ask you some questions
3 about what -- you told us, in very summary form this
4 morning when Mr. Rosenblatt was asking you questions,
5 that you reached the opinion that Mary Farnan was
6 addicted to nicotine in cigarettes. Were there certain
7 criteria, standards or rules that applied before you
8 reached that opinion?
9 A. Yes.
10 Q. And if I understand your testimony in your
11 deposition that the key criteria you applied was to
12 determine, to determine nicotine addiction, you felt
13 the key criteria was someone who really indicates a
14 determination to quit and gets help and consults with a
15 physician or some clinic in an effort to get help
16 quitting smoking; is that correct, sir?
17 A. Would you repeat that.

18 Q. I will. The question is: Is the primary
19 criteria that you applied in determining if Mary Farnan
20 was addicted was to, first of all -- consisted of two
21 prongs. Number one is to conclude that she was
22 determined to quit, that's prong number one.
23 And prong number two --
24 A. For addiction?
25 Q. I'm asking you. I'm asking you if this is

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1 your criteria --
2 A. For addiction.
3 Q. -- for addiction to nicotine.
4 Let me finish my question and then if it's
5 wrong, I'll show you your deposition.
6 I'm just asking you whether or not, in
7 determining whether Mary Farnan was addicted to
8 nicotine, did you apply a two-prong test, prong one
9 being to see if there's evidence to indicate that she
10 was determined to quit, and prong two was to see if she
11 had gotten help or consulted with a physician or clinic
12 in an effort to help her quit?
13 A. I don't think I specified those as criteria
14 to define addiction. Addiction I defined as her
15 craving for nicotine if she tried to stop. And her
16 manifestations of dependence on it if she tried to stop
17 as manifested by restlessness and irritability.
18 Q. Well, maybe I should ask this --
19 A. I think you are getting into the matter of
20 her attempts at cessation and whether she was serious
21 about it.
22 Q. Maybe I should ask this question: Do you
23 believe that one of the criteria in determining whether
24 someone is addicted is to see if they've made a serious
25 attempt to quit?

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1 A. No, I don't think that's an absolute
2 criteria, no.
3 Q. You don't think that's an absolute criteria
4 at all?
5 A. For addiction, because an addict may never
6 wish to quit. So I wouldn't regard quitting as a
7 definition of addiction.
8 Q. Not quitting. My question is: Is one of the
9 criteria addiction experts look at to see if someone is
10 truly addicted is to see if they've made a serious
11 attempt to quit and have then been unsuccessful in
12 doing so?
13 A. Well, that's one manifestation of what an
14 addicted person might do, but it's not a definition of
15 addiction.
16 Q. Well, how does --
17 A. The process of attempting to quit is not a
18 matter -- a definition of addiction.
19 Q. Well --
20 A. It may be a manifestation of the intensity of
21 the addiction.
22 Q. Well, are you familiar with DSM III and its
23 criteria to determine addiction?
24 A. I think I am.
25 Q. Let me show you -- mark this as the next

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1 exhibit.
2 MR. ROSENBLATT: Your Honor, objection.

23 (Defendants' Exhibit 36911 was marked for
24 identification.)
25 BY MR. WEBB:

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1 Q. Sir, I'm going to hand you what is marked as
2 Defendants' Exhibit 36911, which is the Diagnostic and
3 Statistical Manual for Mental Disorders, III, Third
4 Edition. I'm going to direct your attention to a page
5 that I have marked in this exhibit as page 178 that
6 sets forth the diagnostic criteria for tobacco
7 dependence and direct your attention to that page, sir.
8 You recognize this as an authoritative
9 source?

10 A. Yes, it is. But it gets updated
11 periodically.

12 Q. Do you see the section Diagnostic Criteria
13 for Tobacco Dependence?

14 A. Yes.

15 Q. That's what you've told the jury, that Mary
16 Farnan was addicted to tobacco; is that correct?

17 A. That's correct.

18 Q. And it says here that the first thing you
19 have to find is continuous use of tobacco, which you
20 clearly find to be the case with Mrs. Farnan. We
21 talked about that a moment ago; is that correct?

22 A. That's what I said is the pervasive,
23 underlying definition.

24 Q. Right. "The first criteria: You've got to
25 find at least one of the following --" do you see that?

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1 A. Yes.

2 Q. Section B, do you see that?

3 A. Yes.

4 Q. The first thing is: Serious attempts to stop
5 or significantly reduce the amount of tobacco use on a
6 permanent basis have been unsuccessful?

7 A. That's correct.

8 Q. I take it you don't disagree with that, that
9 that's one of the things that you look for?

10 A. Yes, that's reactive to A, to dependence.

11 Q. And am I -- okay.

12 A. Continuous use.

13 Q. Here's my question: When you were trying to
14 diagnose and determine whether Mary Farnan was addicted
15 to nicotine, what in your mind is a serious attempt to
16 quit and then been unsuccessful?

17 A. Serious attempt to be repetitive efforts and
18 using help of one sort or another to refrain from
19 smoking.

20 Q. Let me ask you, in your deposition you were
21 asked this question:

22 Question: What in your mind is a serious
23 attempt to quit?

24 Answer: Someone who really indicates a
25 determination and gets help and consults either with

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1 the physician or some clinic in an effort to get help
2 in quitting smoking.

3 Was that an accurate statement?

4 A. Yes.

5 Q. When you looked at the deposition of Mary
6 Farnan and evaluated her efforts to quit, did you find
7 and determine whether or not she consulted with any

8 physician or medical clinic to get help in quitting
9 smoking?
10 A. Yes, she did.
11 Q. Who did she consult with?
12 A. She went through a period of consulting with
13 a variety of people, physicians, including hypnotherapy
14 and medications of various kinds.
15 Q. Well, where in her deposition did she say she
16 ever went to a clinic or consulted a physician to quit
17 smoking?
18 A. Well, in her deposition she refers to
19 consulting with hypnotists and others. She at one time
20 had Nicorette gum, tried patches.
21 Q. She went to a hypnotist, that's correct?
22 A. That's correct.
23 Q. Is that a doctor?
24 A. Usually a physician or a psychologist.
25 Q. She did that on one occasion; is that

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1 correct?
2 A. I'm not sure it was exclusively one occasion.
3 Q. How often did she do it?
4 A. Well, she did it, she was trying seriously
5 over the course of a year.
6 Q. So, did you see evidence in her deposition
7 that she was consulting with a hypnotist for a year?
8 A. She consulted during that year when she was
9 trying to quit. How many times I don't recall.
10 Q. Did she go more than once, if you know?
11 A. I think she did. I'm relying on my memory
12 from that.
13 Q. Would you be able to show that -- do you know
14 where that is in her deposition?
15 A. It's in her deposition.
16 Q. That she consulted with a hypnotist for a
17 year?
18 A. She tried for a year, during which time she
19 consulted with a hypnotist.
20 Q. Other than a hypnotist, did you see whether
21 she ever consulted with any physician or doctor to
22 quit?
23 A. Well, she said she was trying seriously to
24 quit. And since she mentions Nicorette gum and
25 patches, I assume she was consulting with some

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1 physician.
2 Q. When you say you "assume," she didn't say
3 that in her deposition, did she?
4 A. Well, I don't know how she would get those
5 substances without consulting with a physician.
6 Q. Actually, do you remember that Mrs. Farnan
7 testified in her deposition that she actually attended
8 an informal support group at work to quit smoking?
9 A. Yes, I recall that.
10 Q. And did she indicate that she only went to
11 the meetings a couple of times because she didn't think
12 she was dedicated to quit? Do you remember that, sir?
13 A. I don't remember the precise wording.
14 Q. Do you remember her testifying to that effect
15 in her deposition?
16 A. Yes. Yes.
17 Q. Did you see indications -- am I correct that
18 you saw indications that in all the years she smoked,

19 for 30 years, she only quit -- she always quit only for
20 less than 24 hours except on one occasion?
21 A. That's correct.
22 Q. Is that correct?
23 A. I think that's correct.
24 Q. Are you aware of addiction experts who define
25 an attempt to quit and be unsuccessful as one that must

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1 last more than 24 hours?
2 A. What's that question again?
3 Q. Are you aware of addiction experts who
4 believe as their criteria that you cannot have a
5 serious attempt to quit unless it lasts for more than
6 24 hours?
7 A. Well, I think that's reasonable. But getting
8 back to Mrs. Farnan's case, she was trying all the
9 time. So I don't know how one could ever define this
10 as only 24 hours even though it may be in the
11 deposition transcript that way. But she was making an
12 effort over many years to try to quit.
13 Q. She --
14 A. As is true of most addicted smokers.
15 Q. First of all, she testified that she never
16 quit for more than 24 hours except on one occasion for
17 a couple of days when she used Nicorette gum; is that
18 correct?
19 A. That's correct.
20 Q. That's what she said under oath?
21 A. That's correct.
22 Q. You accepted that as true, did you not?
23 A. Yes, but that isn't the only thing she said,
24 she was trying all the time at other points in the
25 transcript.

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1 Q. But if it's reasonable that someone has to
2 try to quit for more than 24 hours, then she only made
3 one actual serious attempt to quit in 30 years?
4 A. But that was over a course of a year, the
5 year 1982 she describes as an entire year of trying
6 seriously to quit.
7 Q. And only on one occasion did she ever quit
8 for more than 24 hours; is that correct?
9 A. I think that's right.
10 Q. And Mrs. Farnan is one of those 50 million
11 people who in your opinion was addicted but who was
12 able to quit?
13 A. Was able to quit?
14 Q. Yes. She quit. She quit smoking in June of
15 1996; is that correct, sir?
16 A. Yes, she did.
17 Q. And did you see some evidence --
18 A. But that doesn't mean she wasn't addicted.
19 Q. No. Actually you've testified that people
20 who are addicted can quit; is that correct?
21 A. Some of them can. But not all of them.
22 Q. Well, she was one that could quit?
23 A. She did quit. Not happily. She smoked right
24 up to going to the admitting room for her surgery.
25 Because she was so apprehensive about withdrawal.

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1 Q. In fact, she testified that that was the time
2 that she had the most motivation to quit, correct?
3 A. That's pretty potent motivation.

4 Q. And am I correct, Doctor, you saw some
5 indications, when you read over Mrs. Farnan's
6 deposition, that prior to 1996 that she lacked the
7 motivation to quit smoking; is that correct?

8 A. I'm trying to get what the original part of
9 the question was.

10 Q. I'll go back, I'm sorry.

11 When you reviewed her deposition, did you see
12 indications, from what she testified to in her
13 depositions, that prior to 1996 she was not motivated
14 to quit?

15 A. No, I don't think I encountered any clear
16 indication that she wasn't motivated. She kept trying
17 at various times. She had some motivation.

18 Q. Let's go through, see if you remember some of
19 these examples.

20 Did you remember in reading her deposition
21 that she testified that in the early 1980s she
22 participated in an informal support group at work where
23 a group of her fellow workers decided to get together
24 and quit smoking and meet every Tuesday night. But
25 that she only attended the meetings a couple of times

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1 because she decided she wasn't dedicated at the time to
2 quit and didn't really feel she gave her best effort.

3 Do you recall seeing that in her testimony?

4 A. Yes, I do.

5 Q. Would that be an indication of a lack of
6 motivation at that time?

7 A. Not necessarily, it's an indication of her
8 addiction.

9 Q. She testified she decided she wasn't
10 dedicated enough to quit?

11 A. Well, that's the other side of addiction.
12 You're putting it one way, I'm putting it the other.
13 She was addicted; therefore, she couldn't continue with
14 the support group because the pressure, the internal
15 pressure for her to smoke was greater than the support
16 she was getting from the group.

17 Q. But Doctor --

18 A. And that's what kept her smoking was the
19 intensity of the addiction.

20 Q. Doctor, I'm sorry, you do agree that
21 addiction experts all agree that people will not be
22 able to quit unless they're motivated enough to quit;
23 is that fair to say?

24 A. That's kind of a statement of the obvious,
25 but it is.

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1 Q. I'm not trying to be obvious. To quit
2 smoking one has to be strongly motivated to do so; is
3 that fair to say?

4 A. That's correct.

5 Q. If Mary Farnan herself testified that she
6 wasn't dedicated enough to quit, would that be an
7 indication to you that she wasn't motivated strongly
8 enough at that time?

9 A. No. I would interpret it the other way. But
10 the addiction was sufficiently intense that that
11 overcame whatever gain she might have gotten from the
12 support group.

13 Q. Did you see any indication that she wanted to
14 continue to smoke because she enjoyed the taste of

15 cigarettes?
16 A. Well, that's part of addiction.
17 Q. Did you see indications that she actually
18 enjoyed smoking?
19 A. Well, that's part of addiction.
20 Q. One of the criteria that addiction experts
21 look at is to see whether someone has withdrawal
22 symptoms if they try to quit; is that correct?
23 A. That's correct.
24 Q. Did you look at that here?
25 A. Yes, I did.

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1 Q. Did you apply the criteria in DSM IV in
2 evaluating her withdrawal attempts or whether she
3 suffered withdrawal?
4 A. Yes.
5 MR. WEBB: I've actually just -- let me put
6 an exhibit sticker on this.
7 (Defendants' Exhibit 14327 and 36912 were
8 marked for identification.)
9 Q. Doctor, I'm going to hand you really two
10 exhibits. One was marked in Phase I as Defendant
11 Exhibit 14327, which is DSM IV. And I've simply taken
12 the Diagnostic Criteria for Nicotine Withdrawal, and
13 I've put it on a chart so it's easier to read. And
14 I've marked that as Exhibit 36912. And I'll just ask
15 you, do you recognize that as being the diagnostic
16 criteria for nicotine withdrawal that appears in DSM
17 IV, sir?
18 A. Yes, I think that is it.
19 Q. Pardon me, sir?
20 A. Yes.
21 Q. Let's see what withdrawal criteria applied to
22 Mrs. Farnan.
23 MR. ROSENBLATT: Judge, objection, it's Phase
24 I, repetitive.
25 THE COURT: As it applies to this particular

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1 case, overruled.
2 BY MR. WEBB:
3 Q. Now, let's go through the criteria. Under --
4 first of all, clearly she used nicotine for at least
5 several weeks; is that correct?
6 A. Oh, yes.
7 Q. And then section B: Abrupt Cessation of
8 Nicotine Use or Reduction in the Amount of Nicotine
9 followed within 24 hours by four or more of the
10 following signs.
11 Do you see that?
12 A. That's correct.
13 Q. Let's go through those. In reading over
14 Mrs. Farnan's deposition did she -- she never reported
15 at any time that --
16 How do you pronounce that?
17 A. Disphoric.
18 Q. -- dysphoric or depressed mood, did she?
19 A. Well, yes, depressed mood would be part of
20 her withdrawal.
21 Q. Can you show me in her deposition where she
22 testified that she was depressed?
23 A. Well, she didn't say "depressed." But she
24 said she wasn't up to par. And I would equate that
25 with feeling depressed. That she couldn't concentrate.

1 So, if you get into some of the others,
2 irritability and frustration, difficulty concentrating,
3 restlessness and some mood change, maybe rather than
4 depressed, dysphoric, yes, she was definitely
5 dysphoric.

6 Q. What did she say that led to you believe she
7 was dysphoric?

8 Let me ask you this question: Am I correct
9 what Mary Farnan testified to is that what she said,
10 her testimony was, was it not, that she would be on
11 edge, have a grumbling stomach --

12 A. That's part of being dysphoric.

13 Q. Can I just finish, then we'll find out.

14 Am I correct, Mary Farnan testified that the
15 symptoms she felt would be to feel nervous, on edge and
16 have a grumbling in her stomach; is that correct, sir?

17 A. Yes.

18 Q. And I just -- does that, if someone feels
19 nervous and is on edge and has grumbling in their
20 stomach, are they depressed?

21 A. Well, "dysphoric" might be a better term.

22 Q. Meaning what?

23 A. Not in the usual normal mood, very
24 uncomfortable. It's ill defined. That's why it's
25 referred to as dysphoric; it's not feeling your usual

1 self. And she did have difficulty concentrating, she
2 did have the irritability and the cramping in her
3 abdomen, yes, all of these things.

4 Q. Now, did you find those --

5 A. And anxiety.

6 Q. She said she was nervous, is that anxiety?

7 A. That's anxiety, yes.

8 Q. Did you find these to be severe withdrawal
9 symptoms that would prevent her from quitting?

10 A. Well, they're difficult withdrawal symptoms.

11 Q. Pardon me?

12 A. It's the withdrawal symptoms that keeps many
13 people addicted.

14 Q. Actually, look at section C, sir. It says:
15 The symptoms in criterion B cause clinically
16 significant distress of impairment of social,
17 occupational or other important areas of functioning?

18 A. Correct.

19 Q. What you're looking for as an addiction
20 expert is to see whether they have any of these
21 symptoms; but if they do have the symptoms, then you
22 have to ask yourself: Do they cause these clinically
23 significant impairments in social, occupation or other
24 important areas of functioning?

25 A. That's correct.

1 Q. And so you looked for that in Mrs. Farnan?

2 A. Yes.

3 Q. Did you find that?

4 A. Yes.

5 Q. What did she testify that led you to believe
6 that?

7 A. She testified she was dysphoric, she was
8 anxious, difficulty concentrating, restless and having
9 grumbling in her stomach or cramping, and that she had
10 difficulty carrying out her daily tasks as a

11 consequence.
12 Q. Actually, sir, isn't it fact that she said
13 just the opposite? Didn't she testify that those
14 symptoms did not interfere with her daily living and
15 she was able to do her normal job with no problems?
16 A. Well, I wouldn't describe it as doing her
17 normal job with no problems, because she was concerned
18 about it. And she said she had difficulty
19 concentrating. I don't know how you perform your job
20 well if you're having difficulty concentrating and
21 you're anxious.
22 Q. Did she --
23 A. So my clinical judgment is that she was
24 having difficulty functioning.
25 Q. Did she testify actually that she had -- I

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1 was able to do my normal job with no problem?
2 A. Well, she was having problems, because she
3 mentioned all of these symptoms.
4 Q. Well, sir, let me show you the page out of
5 her deposition, ask you if you remember reading this.
6 I'm going to hand you her deposition, November 12th,
7 1998.
8 MR. ROSENBLATT: I'll object to this, Judge.
9 The witness has said she said that, but she said other
10 things. Are we now going to go through several hundred
11 pages of Mary Farnan's deposition?
12 THE COURT: Only those that the witness may
13 have relied upon or used to form his diagnosis and his
14 opinion.
15 THE WITNESS: Well --
16 BY MR. WEBB:
17 Q. First of all --
18 A. -- if I read just before what you've
19 highlighted here.
20 Q. You may read anything you want, Doctor.
21 A. She says: I would always get nervous, even
22 during shift, before we could take a break, when I
23 wanted a cigarette.
24 Q. She got nervous, but she was asked --
25 A. She was having difficulty functioning.

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1 Q. I'm sorry. Then she was asked this direct
2 question, was she not, sir: In that period of one day
3 where you were able to quit, did you notice any change
4 in your ability to carry on your daily living?
5 Answer: I was able to do my normal job with
6 no problem, I guess, except for craving a cigarette.
7 A. My interpretation is craving a cigarette
8 interferes with functioning.
9 Q. You would consider that -- I want to make
10 sure I understand, Doctor. You would consider that to
11 be a clinically significant distress or impairment of a
12 social, occupational functioning?
13 A. Well, the combination of her anxiety, her
14 irritability and her difficulty in concentrating and
15 craving for a cigarette, yes, that constellation of
16 symptoms certainly interferes with daily functioning.
17 Q. Even though she said: I was able to do my
18 normal job with no problem?
19 A. Well, a lot of people struggle through a job
20 with a lot of symptoms. That doesn't mean she was
21 feeling well. She obviously was not feeling well.

22 MR. ROSENBLATT: Excuse me, Mr. Webb, that
23 was on page 239 of Mary Farnan's deposition that you
24 just read?
25 MR. WEBB: That's right.

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1 MR. ROSENBLATT: After about four hours of
2 deposition, page 239?
3 MR. WEBB: Page 239. I just put it up on the
4 screen, Mr. Rosenblatt.
5 THE COURT: Page 239.
6 THE WITNESS: But she says: I would always
7 get nervous before we could take a break, when I wanted
8 a cigarette.
9 So she was looking forward to a break in
10 order to have a cigarette.
11 BY MR. WEBB:
12 Q. Right, but it didn't interfere with her
13 job --
14 THE COURT: Counsel, I think we've been over
15 this over and over again.
16 MR. WEBB: I apologize, I'm not going to
17 argue with the witness anymore.
18 BY MR. WEBB:
19 Q. Now, in connection with your opinions that
20 Mary Farnan and Frank Amodeo's cancers were caused from
21 smoking cigarettes, in connection with your causation
22 opinions?
23 A. That's correct.
24 Q. Regarding those opinions, do you agree with
25 me that if each of them had quit smoking cigarettes at
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1 the time they became aware of the health risks of
2 smoking, then it is very unlikely that either one would
3 ever have gotten cancer from smoking cigarettes?
4 A. What's the first part of the question again?
5 Q. I'll read it again.
6 Do you agree with me, sir, based on reading
7 their depositions, that if Mary Farnan and Frank Amodeo
8 had actually quit smoking cigarettes at the time they
9 became aware of the health risks of smoking, then it is
10 unlikely that either one of them would have gotten
11 cancer from smoking cigarettes?
12 A. Well, that's a very speculative question.
13 And I'd have to go back to when they first became
14 aware, fully aware.
15 Q. Let's do that then.
16 A. All right.
17 Q. You've testified in the past and you agree,
18 do you not, if someone quits smoking and quits for 10
19 years, their risk of disease becomes that of a
20 nonsmoker?
21 A. That's right.
22 Q. Is that correct?
23 A. Yes.
24 Q. And you also agree, do you not, that -- well,
25 let's go back and see. Let's start with Mary Farnan.
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1 Mary Farnan began smoking cigarettes, I
2 believe, in the year 1966, you testified; is that
3 correct, when she was 11 --
4 A. Yes, yes, 11 years old, that's correct.
5 Q. And she testified she became a regular smoker
6 four or five years thereafter?

7 A. That's correct.
8 Q. Although I notice you testified this morning
9 that you thought she became addicted between the ages
10 of 11 and 14?
11 A. Well, addiction is a gradual process, yes.
12 Q. But if she didn't even begin to smoke
13 regularly until four or five years after she was 11,
14 how did she become addicted between 11 and 14?
15 A. I said the process of addiction happens over
16 time, so between 11 and 14 she became addicted.
17 Q. Even though she wasn't smoking on a regular
18 basis?
19 A. That's right.
20 Q. Now, is it true that when she began smoking
21 cigarettes in 1966, that at the time she began to smoke
22 there was a warning on each pack of cigarettes that
23 stated: Cigarette smoking may be hazardous to your
24 health?
25 A. That's correct.

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1 Q. Now, you also learned in reading over her
2 deposition that when she was 15 or 16 years old, her
3 step-father, Mr. Vogt, was diagnosed with emphysema and
4 it was believed smoking had caused it, and Mr. Vogt,
5 her step-father, told her she should quit smoking and
6 she decided not to; is that correct?
7 A. I think that's correct.
8 Q. And then another crises came a few years
9 later, at the age of 23, her father was diagnosed with
10 heart problems. And she had a meeting with her
11 father's doctor, who had called the family together,
12 and the doctor told Mary Farnan and the other family
13 members that her father's heart condition was
14 attributable to smoking; is that correct?
15 A. That's correct.
16 Q. And her father died of heart disease then in
17 1982; is that correct?
18 A. I think that's correct.
19 Q. And Mrs. Farnan testified that she did not
20 even attempt to quit after hearing what her father's
21 doctor had said because she did not see any reason to
22 quit at the time; is that correct?
23 A. Well, the meeting with the doctor was in what
24 year? What year were you referring to?
25 Q. I'm referring to after the doctor told Mary

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1 Farnan and the other family members that her father had
2 this serious heart problem caused by smoking,
3 Mrs. Farnan testified that upon learning that, she did
4 not attempt to quit, and she testified she didn't see
5 any reason to quit after learning of that. Is that
6 correct?
7 A. That's correct. But on his death she did,
8 that was the year she made the serious effort to quit.
9 Q. I'm talking about when she first learned that
10 her father had this illness, she didn't see any reason
11 to quit?
12 A. I don't know if she saw any reason. She
13 didn't.
14 Q. She's testified she didn't even make an
15 attempt to quit at that time.
16 A. That's correct.
17 Q. Let me ask you, Doctor, if by the age of 23,

18 Mrs. Farnan -- well, let me ask you this, if she had
19 quit at that time at the age of 23, after learning that
20 her step-father had emphysema from smoking, her father
21 had heart disease from smoking, if she had quit at the
22 age of 23, it is very unlikely that she would have
23 gotten lung cancer because of smoking; is that fair to
24 say?

25 A. Well, that's speculative.

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1 Q. But --

2 A. I think she would have reduced her chances.

3 Q. Ten years would have gone by, she would have
4 been 33 and her risk would have been zero; is that
5 correct?

6 A. That's conceivable, conceivable.

7 Q. And we also know then, by the time
8 Mrs. Farnan became 25 years old, she was employed in
9 the health care field; is that correct?

10 A. That's correct.

11 Q. She went to work for a hospital I believe in
12 Crystal River, Florida; is that correct?

13 A. That's correct.

14 Q. And while working at the hospital she
15 obtained a licensed practical nurse degree in 1982 and
16 a registered nurse degree in 1986; is that correct?

17 A. That's correct.

18 Q. And once she started in the hospital in 1980,
19 she has admitted and acknowledged that doctors would
20 frequently tell her how harmful cigarettes were for
21 her; is that correct?

22 A. Well, I assume that's correct.

23 Q. Well, she testified to that, didn't she?

24 A. Yes.

25 Q. I couldn't hear you. Is the answer yes?

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1 A. Yes.

2 Q. Now, in fact, Mrs. Farnan, in her deposition,
3 testified that by 1981, after she went to the hospital,
4 she acknowledged that she knew by that time that
5 cigarettes were bad for you; is that correct?

6 A. That's correct.

7 Q. If she had quit smoking in 1981, it's very
8 unlikely that she would have gotten cancer from smoking
9 cigarettes; is that fair to say?

10 A. '81? Well, she would have reduced her
11 chances.

12 Q. As far as Mr. Amodeo is concerned, I believe
13 you testified this morning he actually was able to quit
14 for an entire year; is that correct?

15 A. Yes, that's right.

16 Q. And obviously he quit again -- I shouldn't
17 say "obviously," that's not fair. He quit again when
18 he was diagnosed with laryngeal cancer in 1987?

19 A. That's correct.

20 Q. What's interesting about Mr. Amodeo, as far
21 as whether he can control his smoking, is that you saw
22 in his deposition that he quit for 10 years, from
23 roughly 1987 to 1997; and then he became what I think
24 the literature calls a chipper; is that correct? Have
25 you seen that term "chipper," c-h-i-p-p-e-r, in the

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1 literature?

2 A. I've seen it.

3 Q. It refers to someone who will bum a cigarette
4 or smoke one or two cigarettes a day?
5 A. That's correct.
6 Q. And that shows a lot of control when people
7 can do that?
8 A. That's correct.
9 Q. And did he do that?
10 A. That's correct.
11 MR. WEBB: Your Honor, can we have a short
12 break. I may be done, if I can consult with counsel.
13 THE COURT: All right. Let's take a short
14 break, folks.
15 (The jurors exited the courtroom.)
16 THE COURT: Before we get into that. Let me
17 ask you a question. Did we agree about Friday, that it
18 would be a work day?
19 MR. ROSENBLATT: That no jury. I hope not.
20 THE COURT: No, I'm just --
21 MR. ROSENBLATT: I hope it's an off day.
22 Jury is not going to be here. That we're agreed on.
23 THE COURT: We are not going to have anything
24 to do, say, Friday morning?
25 MR. ROSENBLATT: I hope not. I hope not so I

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1 can line up witnesses.
2 MR. WEBB: Judge, the only matter that we
3 have pending, and we don't have to deal with it today,
4 we have a motion in limine dealing with the statute of
5 repose that got filed some time ago.
6 THE COURT: I just read it.
7 MR. WEBB: I'm not saying we have to deal
8 with it today, but we can deal with it sometime maybe
9 tomorrow, whenever is convenient with the Court or
10 Mr. Rosenblatt. Or if you want to rule on it without
11 a -- we just want it ruled on, Your Honor.
12 THE COURT: Well, I really have got to give
13 him time to respond.
14 MR. WEBB: That's fine.
15 (A brief recess was taken)
16 THE COURT: All right. Have a seat, folks.
17 MR. WEBB: I have no more questions, Your
18 Honor.
19 MR. REID: I'm going to have a couple, just a
20 couple.
21 THE COURT: Then we have some redirect?
22 MR. ROSENBLATT: Yes.
23 THE COURT: Finish by 5:00, I guess?
24 MR. ROSENBLATT: I would hope so.
25 THE COURT: Let's bring the jury out.

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1 THE BAILIFF: Bringing in the jury. Jurors
2 entering the courtroom.
3 (The jurors entered the courtroom.)
4 THE COURT: All right. Be seated, please.
5 Any further questions, Mr. Webb?
6 MR. WEBB: I have no more questions, Your
7 Honor. Thank you.
8 THE COURT: Mr. Reid?
9 MR. REID: Yes, sir.
10 CROSS-EXAMINATION
11 BY MR. REID:
12 Q. I'm Ben Reid, and I represent Reynolds and I
13 have about three or four questions, and that's all.

14 When you were presented for deposition and
15 you gave your opinions, those were the opinions that
16 you had in this case, as I take it, the ones you had
17 developed from your review?
18 A. That's correct.
19 Q. And is it fair to say that in that
20 deposition, sir, you said, aside from lung cancer there
21 were no other significant diseases caused by smoking
22 which Mrs. Farnan suffered from?
23 A. I believe I said that, yes.
24 Q. And in the same deposition, you told us
25 earlier today that BAC is a sub-type of adenocarcinoma?

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1 A. That's correct.
2 Q. And you made reference to there being a note
3 in the records of using the term "adenocarcinoma"; do
4 you remember that?
5 A. Yes.
6 Q. And isn't it a fact, sir, that adenocarcinoma
7 is the most common lung cancer among nonsmokers?
8 A. Yes, I think that's correct.
9 Q. Now, the last thing I'd like to ask you, sir,
10 is Mr. Webb was talking with you about some symptoms or
11 some things that are consistent with BAC, and you
12 talked about the different findings in the cells and
13 the cytology. Do you remember that discussion?
14 A. Yes.
15 Q. I want to ask you about just a couple more
16 conditions and ask if, in fact, these are consistent
17 also.

18 First of all, sometimes BAC has a
19 pneumonia-like appearance; is that fair to say?

20 A. That would be correct, yes.
21 Q. Also, sir, isn't it a fact that BAC is often
22 seen in association with scarring in the lungs?
23 A. That is an association that has been
24 recorded, yes.
25 Q. And scarring can come from things such as

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1 exposure to tuberculosis or pneumonia, for instance?
2 A. Yes, that's a possibility.
3 Q. Isn't it also true, with regard to BAC, that
4 oftentimes the patients are asymptomatic when they
5 first come to see their doctor?
6 A. Yes, that's correct.
7 Q. And is it also consistent with BAC to have a
8 symptom, frothy white sputum?
9 A. Yes, that is quite common.
10 Q. And you talked a little bit about BAC being
11 spread by aspiration I think you said?
12 A. No, through airways.
13 Q. Through airways, okay. And isn't it
14 consistent with BAC that there not be involvement of
15 the nodes, the lymph nodes?
16 A. Yes, that's consistent.
17 Q. With BAC?
18 A. That's correct.

19 MR. REID: Thank you, sir, that's all I have.
20 THE COURT: All right. Any redirect?
21 MR. ROSENBLATT: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. ROSENBLATT:

24 Q. Dr. Richmond, very early in Mr. Webb's

25 questioning, he put that blow-up up on the board, and
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1 reminded you of the fact, did you know, he asked you
2 that this jury in Phase I of this case, when asked the
3 question on the jury verdict form as to what diseases
4 cigarette smoking caused, the jury found one kind of
5 lung cancer, one kind of lung cancer that in their
6 judgment was not caused by cigarette smoking, and I
7 believe you said that was BAC, correct?
8 A. That's correct.
9 Q. They found adenocarcinoma was a form of lung
10 cancer caused by cigarette smoking, correct?
11 A. Right.
12 Q. Squamous cell carcinoma, large cell carcinoma
13 and small cell carcinoma, this jury found that all of
14 those kinds of cancer are caused by cigarette smoking,
15 correct?
16 A. Yes, that's correct.
17 Q. As you reviewed the record on Mary Farnan,
18 whether it was pathology or surgery or radiation
19 oncology, or Dr. Harmon in ICU and the pulmonary
20 specialist, did any doctor in the record on Mrs. Farnan
21 put in a sentence anywhere in that record that anyone
22 was thinking that this could have been or was BAC?
23 A. No, there was no evidence.
24 Q. You were shown three boxes, Lahey boxes of
25 medical records. Frank Amodeo is 60 years old today.

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1 If I had sent you three huge boxes containing his birth
2 records and every time he went to visit the school
3 nurse, what would you have thought?
4 Q. Would you have reviewed those records and
5 thought they were pertinent to your -- to my discussion
6 with you as to whether or not cigarette smoking had
7 caused his throat cancer and Mary Farnan's lung cancer?
8 A. No, I would not.
9 Q. You were asked a lot of questions about
10 whether you talked to any of the doctors who treated
11 either Mrs. Farnan or Mr. Amodeo and you said, no, you
12 didn't, you did not talk to any of them.
13 A. A hospital chart, a hospital record, is that
14 a means of how doctors communicate with each other,
15 through a hospital chart?
16 A. Yes. That's a very important means of
17 communication and that's what -- that was what was in
18 the record is a lot of communication in writing to each
19 other.
20 Q. And if a doctor comes along later --
21 hospitals are open 24 hours a day and if a doctor comes
22 along and picks up a patient's chart and read his
23 record, he can find out what a doctor was thinking or
24 saying a week ago or two weeks ago, and that doctor may
25 be in China or not available. But by virtue of the

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1 record, a doctor can get up-to-date on a patient's
2 condition and what a particular doctor was saying and
3 thinking at a particular point in time, correct?
4 A. That's correct.
5 Q. That's one of the purposes of a hospital
6 record?
7 A. That's correct, it's a time honored way of
8 doing it.
9 Q. Now, I just want to -- I'm sure this jury

10 understands perfectly that when we -- for example, if
11 we talk about a radiologist at a hospital, a
12 radiologist looks at an x-ray or looks at a CT scan and
13 then dictates his report, which becomes a part of the
14 hospital record, correct?

15 A. That's correct.

16 Q. And, presumably, he is dictating his
17 findings, what he sees on the x-ray, he's dictating so
18 that other doctors and other specialties will have the
19 advantage of his interpretation of the x-ray, correct?

20 A. He or she sees.

21 Q. What he or she sees.

22 Does the same hold true of a pathologist
23 looking at a slide of tissue, that when he or she is
24 dictating, they're dictating what they consider to be
25 the significant findings of the tissue slides so that

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1 other doctors, other specialists taking care of a given
2 patient will know the conclusions reached by the
3 pathologist?

4 A. That's correct.

5 Q. And no pathologist and nobody else in Mary
6 Farnan's chart said a word about BAC?

7 MR. WEBB: Objection, asked and answered.

8 THE COURT: Well, it is. Sustained.

9 BY MR. ROSENBLATT:

10 Q. Now, you were asked: Well, did you examine
11 Mrs. Farnan or Mr. Amodeo?

12 Well, if you examined them years after their
13 cancer was removed by surgery or eradicated by
14 radiation, what benefit would an exam -- how would that
15 have helped you in reaching your opinions in this case,
16 if at all?

17 A. I think in these instances, it would not
18 have.

19 Q. A lot of questions were asked along the line
20 of: Did you have anything to do with selecting the
21 hospital records that you reviewed?

22 As you reviewed the operative reports of Mary
23 Farnan and the comments made by doctors in various
24 specialties, did you feel you were missing anything?

25 A. No, I didn't.

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1 Q. And same thing with Mr. Amodeo, as you
2 reviewed his records and the history of his cancer and
3 the history of his radiation treatment and the
4 aftermath thereof, did you feel you were missing
5 anything that was pertinent to you?

6 A. No, I did not.

7 Q. In your career as a pediatrician, did you
8 have occasion -- now, when you say "adolescents," a
9 pediatrician takes care, in your day and now,
10 pediatrician, my understanding, takes care of kids
11 what, up to 18?

12 A. 18, sometimes 20.

13 Q. But not just little babies, I mean pediatrics
14 can deal with big husky people who happen to be
15 teenagers.

16 As a pediatrician, in your long career, did
17 you have occasion to diagnose lung problems, heart
18 problems and either take care of them yourself or refer
19 them to specialists?

20 A. Yes, I did.

21 Q. And as a flight surgeon, when you were
22 dealing with adult pilots in the service whose function
23 and whose level of health was critically important,
24 obviously, did you examine and study their lung
25 function?

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1 A. Yes, I did. That was a very important
2 component of being a flight surgeon.

3 Q. Now, you made the remark, Dr. Richmond, when
4 you were being questioned about did the pathologist say
5 such and such, you said that the pathologist was at one
6 of the great medical centers in this country. And you
7 were referring to what?

8 A. The Shands University of Florida Medical
9 Center.

10 Q. In Gainesville?

11 A. In Gainesville.

12 Q. And at Harvard you recognized that Shands at
13 the University of Florida has a national and
14 international reputation --

15 A. Outstanding reputation.

16 Q. -- as an outstanding medical center?

17 A. Yes.

18 Q. Something Floridians should be proud of?

19 A. Very.

20 Q. You were asked some questions about other
21 family members of Mary Farnan who had cancer. Were
22 those family members who developed cancer smokers?

23 A. I think from the deposition some of them
24 were, but I'm doing that from memory.

25 Q. Family or genetics, when we talk about the

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1 concept of susceptibility, would that concept of
2 susceptibility come into play absent a long history of
3 smoking?

4 I guess what I'm asking you is, in your
5 opinion, by virtue of Mary Farnan's family history,
6 whatever it would have been, would she have developed
7 lung cancer, if she would not have been a 30-year
8 smoker?

9 MR. WEBB: Objection, lack of qualification.

10 THE COURT: Overruled.

11 THE WITNESS: Would you please --

12 BY MR. ROSENBLATT:

13 Q. I'm saying absent -- if we assume for the
14 purpose of this question, hypothetically, that Mary
15 Farnan, because of a family history, had a theoretical
16 susceptibility to cancer, would she have developed the
17 lung cancer she developed absent her 30-year history of
18 smoking?

19 A. No.

20 Q. Now, the occupational expert that you
21 consulted with to ask a question about saw dust or wood
22 dust, the name of that physician is who?

23 A. Dr. Herbert K. Abrams.

24 Q. And what is his background and specialty?

25 A. He is professor emeritus of preventive

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1 medicine at the University of Arizona Medical Center in
2 Tuscon. And his specialty in preventive medicine is
3 occupational health. And his expertise within
4 occupational health is in dust-borne diseases.

5 Q. And when you discussed with him Frank

6 Amodeo's exposure to saw dust as a possible cause of
7 his throat cancer, what did he say?
8 MR. WEBB: Objection, Your Honor, as far as
9 what --
10 MR. ROSENBLATT: They opened that door.
11 THE COURT: Let's talk about this.
11 BY MR. ROSENBLATT:
12 Q. Mr. Webb had asked you a question about a
13 page from the chart of Dr. Collins. And the date of
14 this particular visit is April 23, 1987. Two months,
15 less than two months before Frank Amodeo is diagnosed
16 with a tumor in his throat that is so large it's
17 inoperable?
18 MR. WEBB: Your Honor, I'm going to object to
19 the leading. This is redirect, object to the leading
20 form of the question.
21 THE COURT: Let me see. I don't think he got
22 to the question yet. I think you're a little bit
23 premature at this point. I think what he's doing is
24 repeating what you had asked him. Now I don't know if
25 he's got a question.

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1 BY MR. ROSENBLATT:
2 Q. I do have a question. And my question is:
3 Mr. Webb -- well, he had up on the board, the
4 highlighted statement from --
5 Do you have the record in front of you?
6 A. Yes, I do.
7 Q. The highlighted statement that Mr. Webb
8 wanted highlighted from Dr. Collins' report says as
9 follows: Patient states he is working unusually long
10 hours and also that he works in saw dust and he blows
11 out a lot of saw dust. It doesn't say he blew saw dust
12 out of his nose or out of his mouth, does it?
13 A. No, it doesn't.
14 Q. Let me ask you this, if you had had this
15 record, would that have in any way changed your opinion
16 concerning the fact that in your judgment cigarette
17 smoking caused Mr. Amodeo's throat cancer?
18 A. No, it would not have.
19 Q. Go down to the next line. And this is April
20 23, 1987, where Dr. Collins says: General appearance,
21 patient does not appear to be ill.
22 Based on your experience, if Dr. Collins in
23 April had looked down Frank Amodeo's throat,
24 considering what we know occurred on June 12, 1987,
25 when he was diagnosed with this huge tumor in his

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1 throat, is it conceivable to you that he would not have
2 seen something that was abnormal in Mr. Amodeo's throat
3 in April?
4 A. No, it does not seem conceivable.
5 Q. And in this very record Dr. Collins makes the
6 statement about Mr. Amodeo: His appetite is good, but
7 he is still losing weight. He has lost 11 pounds since
8 January of this year. He has not stopped smoking, but
9 he is trying to do so.
10 Is weight loss a suspicious circumstance to a
11 doctor?
12 A. Very, that much weight loss in particular.
13 Q. Look at the Wynder article. And you had
14 testified, I believe, that obviously you would have
15 heard of Dr. Wynder, but you were not familiar with

16 this particular article --
17 A. That's correct.
18 Q. -- the title of which is: Environmental
19 Factors in Cancer of the Larynx.
20 What brought Dr. Wynder to prominence in the
21 first place in the area of smoking and health?
22 A. Dr. Wynder was one of the early investigators
23 that demonstrated that the tar and nicotine compounds
24 found in tobacco, when rubbed on the skins of mice,
25 produced cancer in the skins of mice. So that was one
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1 of the early experimental demonstrations of the
2 association between tobacco and cancer.
3 So he was one of the pioneers in developing
4 experimental studies to show that substances in tobacco
5 were capable of producing cancer in animals.
6 Q. Now, this is another page of Dr. Wynder's
7 article. And I would ask you, Dr. Richmond, to go to
8 Page 1596. And my focus, Dr. Richmond, is going to be
9 this sentence up here, which I'll -- I don't think the
10 jury can read it, but I'm going to read it to you.
11 First of all, the heading is: Etiological
12 Factors Other than Tobacco and Alcohol, Occupational
13 Exposure, and Dr. Wynder is one of several authors of
14 this article.
15 And the authors say: Although occupational
16 exposure is obviously important, the effects of various
17 exposures are difficult to quantify and isolate.
18 Now, what does that sentence mean to you as a
19 physician and a researcher in the area of causation and
20 the relationship between smoking and certain diseases?
21 A. Well, it suggests to me that this is a very
22 difficult and complex area, because one can potentially
23 deal with multiple exposures. And this is why I said
24 earlier, when Mr. Webb was cross examining me, that
25 this was -- this is not the ideal approach to studying
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1 this kind of problem. Because it's a retrospective
2 approach, studying people who have already developed
3 disease and then trying to work back to what may have
4 caused it.
5 Much more effective approaches are what I
6 called anterospective approaches, in which large
7 numbers of people are put into various groups who are
8 then subjected to various kinds of exposure.
9 So that's what -- he's trying to qualify the
10 difficulties in trying to do this kind of study.
11 Q. Go to the very next page, 1597. And the
12 heading here, it's difficult to read, simply says:
13 Discussion. Discussion.
14 And then I'll read to you a couple of
15 sentences up to here. But in a scholarly article, when
16 the authors get into the area of discussion, are they
17 generally talking about some of their basic
18 conclusions?
19 A. Yes.
20 Q. So let me read that to you. And again, I'm
21 going to ask you what it means to you.
22 The authors of this article say: Nearly 20
23 years ago it was reported that tobacco usage,
24 especially in the form of cigarettes, is the principal
25 risk factor for both the glottic and supraglottic types
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1 of laryngeal cancer. And that excessive alcohol
2 consumption, although not a risk factor by itself, was
3 a powerful promoter of the effect of tobacco
4 carcinogens. It might well be asked whether any new
5 information has been obtained in the present study
6 beyond confirming the roles of tobacco usage and
7 alcohol consumption.

8 Based on what I just read to you, what are
9 the authors of this article concluding about the
10 significance or lack of significance of wood dust as it
11 relates to laryngeal cancer?

12 MR. WEBB: Your Honor, I object. He's asking
13 him to speculate beyond what it says in this paragraph.
14 He can't speculate what's in someone else's mind or
15 head.

16 THE COURT: Overruled.

17 THE WITNESS: Well, what this says is that
18 tobacco usage has been established as the major factor
19 in the production of various kinds of laryngeal cancer
20 and that alcohol consumption can augment those effects.
21 BY MR. ROSENBLATT:

22 Q. Now, counsel asked you --

23 I'm done with the Wynder article for now.

24 I'm going on to something else.

25 Counsel asked you whether addiction was a

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1 psychiatric diagnosis. You said yes. You were a long
2 time professor of psychiatry at the Harvard Medical
3 School. Do you need any more information to reach the
4 conclusions that Frank Amodeo and Mary Farnan,
5 throughout their smoking careers, were addicted to
6 smoking cigarettes? Did you need any more information
7 than you had?

8 A. No, I didn't.

9 Q. Now, as a specialist in the field of child
10 psychiatry, 11-year-old kid, or a 14-year-old kid --
11 well, let me first limit it to Mary Farnan.

12 An 11-year-old kid begins to smoke, and her
13 father is a two-pack-a-day smoker of Lucky Strikes.
14 And let's assume she notices on the pack of cigarettes,
15 either the year she begins to smoke or the following
16 year, that cigarette smoking may be hazardous to your
17 health.

18 What does that mean to an 11- or 12-year-old?

19 MR. REID: Objection, Your Honor, that would
20 be speculative.

21 MR. SMITH: Objection.

22 THE COURT: I think we can only answer that
23 in general terms as it relates to a child psychiatrist
24 addressing the issue as it would relate to an
25 11-year-old.

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1 MR. REID: We would object to it relating to
2 an abstract 11-year-old.

3 THE COURT: I know you object to it.
4 Overruled.

5 THE WITNESS: Well, 11-year-olds don't have
6 fully mature judgment and they're inclined to take
7 risks that are considered prohibitions by the adult
8 community. Indeed, that's one of the attractive
9 features of smoking to young people.

10 And there's also a very strong element in
11 their thinking, in their immaturity of their thinking,

12 of denial, that is, denying that anything harmful can
13 happen to me.
14 BY MR. ROSENBLATT:
15 Q. Well, even if we take someone with very
16 mature judgment who is an adult, who believes that 90
17 percent of cigarette smokers never get lung cancer and
18 they figure, well, I'm not going to be in the unlucky
19 10 percent, a lot of people think that way, don't they?
20 A. Yes.

21 MR. REID: Objection, Your Honor, it's
22 leading also. Speculative and leading.

23 THE COURT: Overruled.

24 BY MR. ROSENBLATT:

25 Q. You were asked questions about Mary -- by
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1 Mr. Webb about Mary Farnan where he told you she was an
2 intelligent woman. He brought you up to the time she
3 was 23 years of age, where she's told, the doctor says
4 that smoking caused the heart disease which in turn
5 caused the death of her beloved father when she's 23
6 years old; and in spite of that knowledge, she just
7 keep puffing away, day after day and week after week.

8 What does that tell you about the power of
9 the addiction and the disconnect between the addiction
10 and rational thought?

11 MR. WEBB: I object on speculation and
12 leading. He's testifying for the witness, Your Honor,
13 I object to the form of the question and the
14 speculation.

15 MR. ROSENBLATT: I said: What does it tell
16 you?

17 THE COURT: Overruled.

18 THE WITNESS: It tells me something about the
19 potency of the addiction and the fact that a person
20 wouldn't have a feeling of well-being without the
21 intake of nicotine as an addictive substance.

22 BY MR. ROSENBLATT:

23 Q. And if Frank Amodeo believes that the reason
24 he has not been able to eat or drink anything in the
25 last 12 years was caused by this product and is still
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1 capable today of every now and then putting this
2 product in his mouth, lighting up and smoking it, what
3 does that tell you about the power of this product?

4 A. Tells me a lot about the power of addiction
5 and the craving once the addiction sets in that takes
6 place in the absence of satisfying that addiction with
7 the drug.

8 MR. ROSENBLATT: Thank you, Dr. Richmond.

9 THE COURT: All right, you may step down,
10 Doctor, thank you very much.

11 All right, let me talk with the lawyers,
12 please.